



THE HIGHWAY LAW

OF NEW YORK STATE

11

CHAPTER XIX OF THE GENERAL LAWS

(Laws 1890, Chap. 568.)

TOGETHER WITH ALL OTHER STATUTES OF
THE STATE, GENERAL AND MIS-
CELLANEOUS, RELATING
TO THE SUBJECT OF
HIGHWAYS.

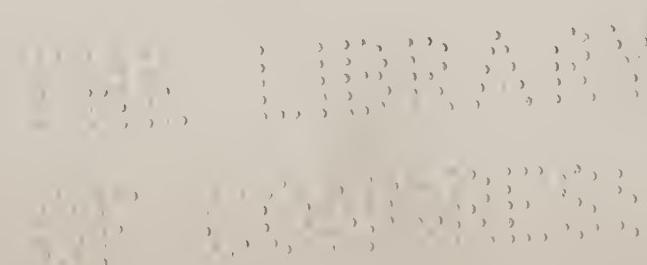
ANNOTATIONS AND FORMS.

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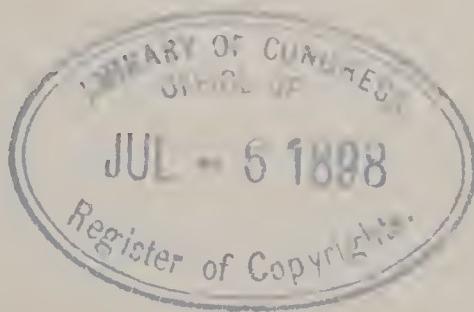
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PREFACE.

Before the passage of the general Highway Act of 1890, the law of this state in regard to highways was a confused and conflicting mass of Revised Statute provisions, independent general statutes and special acts. The legislature, by its attempt to codify all these into one act, accomplished a great deal in the way of simplification and elimination, but it failed to be thorough, leaving a number of statutes still standing upon their own foundations as highway laws. Succeeding legislatures have served only to complicate matters further by a seeming disregard of Chapter XIX of the General Laws in their enactments. Moreover, many of the special acts passed both before and since the year 1890, applicable only under certain conditions of population and location, have no place in a general highway act; while other provisions of law, though pertinent to the subject of highways, belong more properly and are found in the various chapters of the general laws.

To gather all these widely scattered parts into one comprehensive whole, has been the endeavor of the editor in the preparation of this volume. While the Highway Law proper has received the more careful treatment, in that it has been exhaustively annotated in all its parts, yet it is believed that no one provision of any unrepealed statute has escaped notice and insertion in that part of the book called the Appendix, with references thereto wherever necessary in the body of the work.

Being finished, the book, if good for anything at all, should be equally useful to both lawyer and layman. To the former, it should be an aid in showing the interpreta-

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tion given by the courts to each part of the statute; to the latter, it should be a compendium of their rights and duties in relation to highways, whether they be officials charged with the care thereof or mere travelers thereon. That such a degree of excellence has been attained, however, is for the reader, not the editor, to determine.

In the digesting of more than one thousand court decisions, acknowledgment should be made of valuable assistance rendered by Mr. Andrew P. McKean of the Troy bar. The forms have been carefully selected from those most approved by long usage.

H. N. G.

Troy, N. Y., June 1, 1898.

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THE HIGHWAY LAW.

CHAPTER 568, LAWS 1890.

AN ACT IN RELATION TO HIGHWAYS, CONSTITUTING
CHAPTER NINETEEN OF THE GENERAL LAWS.

CHAPTER NINETEEN OF THE GENERAL LAWS.

THE HIGHWAY LAW.

- ARTICLE I. Highway officers, their general powers and duties. (§§ 1-24.)
II. Assessment for highway labor. (§§ 30-53.)
III. The duties of overseers of highways, and the performance
of highway labor. (§§ 60-73.)
IV. Laying out, altering and discontinuing highways and
laying out private roads. (§§ 80-123.)
V. Bridges. (§§ 130-145.)
VI. Miscellaneous provisions. (§§ 150-164.)
VII. The regulation of ferries. (§§ 170-174.)
VIII. Repealing and other clauses. (§§ 180-183.)

ARTICLE I.

HIGHWAY OFFICERS, THEIR GENERAL POWERS AND DUTIES.

- SECTION 1. Short title.
2. Treasurer of highway commissioners.
3. Powers of one commissioner.
4. General powers of commissioners.
5. Mile-stones and guide-boards.
6. Road machines and implements.

Treasurer of highway commissioners.

- SECTION 7. Stone-crushers and materials.
8. Custody of stone-crushers.
9. Additional tax.
10. Extraordinary repairs of highways or bridges.
11. Auditing expense thereof.
12. Accounts, how made out.
13. Unsafe toll-bridge.
14. Drainage, sewer and water pipes in highways.
15. Actions for injuries to highways.
16. Liability of towns for defective highways.
17. Action by town against commissioners.
18. Audit of damages without action.
19. Reports of commissioners.
20. General duties of overseers.
21. Opening obstructed highways.
22. Penalties against overseers.
23. Penalties, how collected.
24. Compensation of overseers.
25. Division of town into highway commissioner districts.
26. Duties of commissioner in each district.

SECTION 1. *Short title.*—This chapter shall be known as the highway law.

New.

See notes under § 100, *post*, as to what constitutes a highway.

See L. 1893, ch. 655, Appendix, *post*.

§ 2. *Treasurer of highway commissioners.*—When there is more than one commissioner of highways in any town, they shall designate one of their number to be treasurer. If they fail so to do, the commissioner longest in office shall be the treasurer; and all money collected for highway purposes, or belonging to the highway fund of the town, shall be paid to him. Before receiving such money, he shall execute to the town an undertaking, to be approved by the supervisor, to the effect that he will faithfully account and pay over to any officer or person

Powers of one commissioner.

entitled thereto, any money that may come into his hands as such treasurer.

Revised from L. 1873, ch. 395, § 5.

As to the election of highway commissioners, see Town Law, §§ 12, 13, 15, Appendix, *post*; oath of office, Town Law, §§ 51, 56, Appendix, *post*; regular undertaking required to be given by each commissioner, in addition to the one required by this section, Town Law, §§ 63, 66, Appendix, *post*; official oath and undertakings, Public Officers Law, §§ 10, 15; an officer lawfully holding over, Public Officers Law, § 5; vacancy in office, Town Law, § 65, Appendix, *post*; highway commissioners as fence viewers, Town Law, § 21, Appendix, *post*, and §§ 100, 102-105, 108, 124, 125, 127-130; commissioners to resign to town clerk, Public Officers Law, § 21; removal from office for misconduct, &c., Public Officers Law, § 25a.

See L. 1897, ch. 481, § 21, Appendix, *post*, amending Town Law as to election of highway commissioners.

As to term of office of highway commissioner. (*People ex rel. Lovett v. Randall*, 151 N. Y. 497.)

§ 3. Powers of one commissioner.—When any town has but one commissioner of highways, the term, commissioners of highways, when used in this chapter, shall mean such one commissioner.

Practically new. A somewhat similar provision was found in L. 1873, ch. 395, § 6, hereby repealed. That section was amended by L. 1881, ch. 644, but the amendment was subsequently repealed by L. 1883, ch. 196.

For similar provisions, see Town Law, § 15, Appendix, *post*, and Statutory Construction Law, § 18.

§ 4. General powers of commissioner.—The commissioners of highways in the several towns, shall have the care and superintendence of the highways and bridges therein, except as otherwise specially provided in relation to incorporated villages, cities and other localities; and they shall

General powers of commissioner.

1. Cause such highways and bridges to be kept in repair, and give the necessary directions therefor;

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 1.

See §§ 16, 17, *post*, and notes thereunder as to liability of town and highway commissioners for defective highways.

As to powers and duties of highway commissioners as water commissioners of their towns, see R. S. part III, ch. 8, tit. 16, § 16; as to care and preservation of town sewers, drains or culverts by the highway commissioners, see L. 1893, ch. 545, § 8; as to improvement of village streets by officers thereof, see Village Law, §§ 140-169, Appendix, *post*; as to care of highways on tribal lands, see Indian Law, §§ 12, 73, 80, Appendix, *post*.

Because the statute imposes upon the overseers of highways the duty of keeping them in repair, the commissioners are not relieved from that duty also and from giving the requisite directions to the overseers. And they must also use reasonable diligence to see that their directions are observed. (*Bartlett v. Crozier*, 17 Johns. 437; *Farman v. Town of Ellington*, 46 Hun, 41; *Bryant v. Town of Randolph*, 44 St. Rep. 86.)

Powers of highway commissioners discretionary; no absolute and imperative duty to repair is imposed. (*Peck v. Batavia*, 32 Barb. 641.)

Commissioners of highways have no authority to lay out new roads through wild or unimproved lands. (*Gould v. Glass*, 19 Barb. 179.)

Commissioners of highways may take gravel within the bounds of the highway for the purpose of repairing the road in other places. (*Duryea v. Smith*, 42 St. Rep. 565.)

Highway officers may not take soil from the land of an owner to use for highway purposes at other places than on his land. (*Cotanch v. Grover*, 57 Hun, 272.)

The provisions of the statute intended for the government of citizens and do not pertain to the affairs of Indians. (*Bishop v. Barton*, 2 Hun, 436.)

The statute which prescribes the powers and duties of commissioners of highways should, when applied to village trustees, who are declared commissioners, be liberally construed and their acts under it indulgently regarded. (*Graves v. Otis*, 21 Hill, 466.)

2. Cause such highways as shall have been laid out, but not sufficiently described, and such as shall have been

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used for twenty years, but not recorded, to be ascertained, described and entered of record in the town clerk's office;

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 1.

See notes under § 100, *post.*

What constitutes a proper description. (*Tucker v. Rankin*, 15 Barb. 471.)

No authority is conferred upon commissioners to adjudge what was originally intended in relation to the width or location of the road, further than such intention is manifested by actual user. (*People v. Judges*, 24 Wend. 491.)

Cannot enlarge or change location of road. (*Snyder v. Plass*, 28 N. Y. 465; *Cole v. Van Keuren*, 41 Hun, 262; *Ivory v. Town of Deerpark*, 116 N. Y. 476; *James v. Sammis*, 132 N. Y. 239.)

Where the commissioners of highways have ascertained and described a road under this section, their certificate is not a defence to an action against an overseer of highways for trespass, where such certificate did not purport to be based either upon a record or upon an adjudication of user for twenty years; and proof is admissible on behalf of the plaintiff that the road was not a public highway either by use or by dedication. (*Kelsey v. Burgess*, 12 Supp. 169.)

3. From time to time, not oftener than once a year, divide the town into so many highway districts as they shall judge convenient, by writing, under their hands, to be filed with the town clerk, and by him to be entered in the town book, at least ten days before an annual town meeting. A territory not exceeding one square mile, containing a population of not less than one hundred and fifty, and not including a part of a city or village, may be established as a separate highway district in the following manner: A verified petition of two-thirds of the electors of such territory representing two-thirds of the taxable property therein and describing the territory, may be presented to the highway commissioner at least twenty days before the annual town meeting. The petition shall state the population of the proposed district, and the taxable persons and property as appears by the last preceding

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assessment roll of the town. A farm or lot shall not be divided in the formation of such district. Within ten days after the presentation of such a petition, the highway commissioner shall establish the district in the manner above required for other highway districts. The highway district so established shall not be abolished, except upon the petition or written consent of two-thirds of the electors representing two-thirds of the taxable property of the district. The highway commissioner may extend the highway district, so established, not more than half a mile in any direction, and if it is so extended an order shall be entered accordingly.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 1. Amended by L. 1897, ch. 782.

See *People v. Sly*, 4 Hill, 593.

4. Assign to each of the highway districts such of the inhabitants and corporations liable to work on highways, as they shall think proper, having regard to proximity of residence as much as may be;

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 1, as amended by L. 1853, ch. 63.

See § 31, *post*, as to lists of taxable inhabitants and corporations, how furnished to commissioners, and § 33, *post*, as to method of assessment of labor on highways.

5. Within one week after each annual town meeting, make and file with the town clerk, a written appointment of a resident of each district, to be overseer of highways therein. The town clerk shall notify each overseer of his appointment, within ten days after the filing thereof; and the person so appointed and notified, shall thereupon become and be the overseer of highways within his district for one year, and until his successor shall be appointed. If any person so appointed overseer, shall refuse to serve,

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or his office shall become vacant, the commissioners shall in like manner appoint some other person to be overseer;

Revised from L. 1865, ch. 522, § 7, as amended by L. 1880, ch. 503, and from 1 R. S., ch. 16, tit. 1, art. 1, § 14.

Person appointed overseer liable to a penalty of \$10 for refusal to serve. (Town Law, § 55; *Winnegar v. Roe*, 1 Cow. 258; *Haywood v. Wheeler*, 11 Johns. 432; *Bentley v. Phelps*, 27 Barb. 524.)

6. Require overseers of highways to warn all persons and corporations assessed to work on highways, to come and work thereon, with such teams and implements, and at such times as the said commissioners, or any one of them shall direct;

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 1.

See §§ 60, 61, *post*, as to overseers giving warning.

7. Expend all moneys raised and collected from the town at large for highway purposes, upon the highways and bridges situated in, or upon the borders of the town, or highway districts assigned to the town in which such moneys were raised and collected, in such proportion as they may deem just and proper;

Revised from L. 1878, ch. 377, § 2, superseded hereby.

See §§ 16, 17, *post*, and notes thereunder as to liability of town and highway commissioners for defective highways.

See L. 1895, ch. 717, Appendix, *post*, providing that highway commissioners, where the money system of highway labor has been adopted, must file their contracts with the town clerk. See Town Law, § 182, as to contracts being in name of town. See L. 1890, ch. 332, Appendix, *post*, as to certain moneys received from licenses to be paid over to the highway commissioners.

The collector of taxes in each district is required to pay over to the highway commissioners the moneys raised for the support of the highways and bridges of the town. (Tax Law, § 56.)

Discretion of commissioners of highways regarding expenditures of

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money in their hands must be reasonably exercised. (*Ivory v. Town of Deerpark*, 116 N. Y. 476.)

Commissioners have no authority to borrow money or give promissory note binding upon successors. (*Van Alstyne v. Freday*, 41 N. Y. 174; *Barker v. Loomis*, 6 Hill 464; *People v. Supervisors*, 93 N. Y. 397; *People v. Burrell*, 14 Misc. 217.)

Commissioners must be sued as such upon their contracts; there is no personal liability. (*Boots v. Washburn*, 79 N. Y. 207.)

When a town meeting votes to raise money for a bridge, the commissioner of highways is charged with the duty to erect it. (*Birge v. Berlin Iron Bridge Company*, 16 Supp. 596.)

The power of commissioners of highways to loan moneys in their hands and to enforce the collection of securities taken therefor, is fairly derivable from their general powers and duties. (*Commissioners v. Peck*, 5 Hill. 215.)

See *Watrous v. Shear*, 25 W. D. 164; *People v. Genge*, 38 St. Rep. 345; *Furman v. Taylor*, 41 St. Rep. 791; *Freel v. County of Queens*, 9 App. Div. 186.

8. Have power to enter upon the lands of any person adjoining any of the rivers, streams or creeks of the state, drive spiles, throw up embankments, and perform such other labor as may be necessary upon the banks of such rivers, streams or creeks for the purpose of keeping them or any of them within their proper channels and preventing their encroachment upon any of the highways of the state, and to protect such highways and the property of the town from damages by reason of such rivers, streams or creeks washing away their embankments, or changing the location of the channels, and to agree with the owner of any such lands upon the amount of damages, if any, sustained by him in consequence of such entry upon his lands and the performance of the work herein authorized, and the amount of the damages so agreed upon shall be a town charge, and shall be audited and paid in the same manner as other town charges. If the commissioners are unable to agree with such owner upon the amount of

Mile-stones and guide-boards.

damage thus sustained, the amount thereof shall be ascertained and determined and paid in the same manner as damages for the laying out and opening of highways are required by law to be ascertained, determined and paid, where the commissioners and land owner are unable to agree upon the amount thereof.

Added by L. 1891, ch. 212.

See §§ 83-89, *post*, as to method of ascertaining damages in case of disagreement.

An act authorizing the taking of private property for public purposes, and providing for a just compensation to the owner, is not unconstitutional because it omits to make the assessment and payment of damages a condition precedent to an entry upon and occupation of the premises. (*Smith v. Helmer*, 7 Barb. 416.)

§ 5. *Mile-stones and guide-boards.*—Commissioners of highways may cause mile-boards or stones to be erected upon the highways in their town as they think proper; they shall also cause guide-posts, with proper inscriptions and devices, to be erected at the intersectings of such highways therein, as they may deem necessary, which shall be kept in repair at the expense of the town, by the overseers of the highways of the districts in which they are respectively located. Upon the written application of five resident taxpayers of any town or twenty resident taxpayers of the county in which any such town is located to the commissioners of highways, requesting the erection of one or more guide-boards at the intersection of highways in such town, the commissioner of highways shall cause to be erected at the intersections mentioned in such application such guide-boards, indicating the direction, distances and names of the towns, villages or cities to or through which such intersecting highways run. Such application shall designate the highway intersections at which such guide-boards are requested to be erected and

Road machines and implements.

may contain suggestions as to the inscriptions and devices to be placed upon such boards. The cost of the erection and maintenance of such boards shall be a town charge. If the commissioner of highways refuses or neglects for a period of sixty days after receiving within application to comply with the request contained in such application, he shall for such neglect or refusal forfeit to the town the sum of twenty-five dollars to be recovered by the supervisor in the name of the town, and the amount so recovered shall be set apart for the erection of such guide-boards.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, §§ 5, 9, 10; amended by L. 1895, ch. 339.

See notes under § 153, *post*, as to penalties for injuring mile-stones and guide-posts.

As to the erection of mile-stones and guide-posts by turnpike or plank-road corporations, see Transportation Corporations Law, § 136, Appendix, *post*.

§ 6. *Road machines and implements.*—Commissioners of highways may, upon the request of one or more overseers of the highway districts of their town, contract for and purchase for such district or districts, upon credit or otherwise, a good and sufficient scraper and plow, or either of them, and if a majority of the tax-payers of one or more highway districts in any town, representing more than one-half of the taxable property in such district or in each of such districts, to be ascertained by the last preceding assessment roll and certified to as such by the town clerk of the town, petition the commissioner or commissioners of highways of such town therefor, such commissioners may together with the supervisor and overseer or overseers of such district or districts, contract for and purchase upon credit or otherwise, a road machine for the use of such district or districts, which implements shall be used, cared for and owned by such

Road machines and implements.

district or districts jointly. Such implements shall be paid for out of the highway tax of the district or districts for which they are purchased, and may be paid for in annual installments, not exceeding five. If purchased for more than one district the amount paid by each shall be in proportion to the amount of highway tax; a copy of the note or contract issued upon the purchase of such implements, shall be filed in the office of the town clerk of the town in which such town or road district is situated, and it shall be the duty of said town clerk to present a statement of the sum due thereon to the town board at each annual meeting thereafter for the audit of town charges, and the town board shall audit such sum and certify the same to the board of supervisors of the county. Not more than one-half of the highway tax of any district shall be applied in payment therefor, in any one year. The portion of such tax so applied, shall be required to be paid in money, and be assessed and levied upon the property of such district or districts, and collected in the same manner as other town charges are assessed, levied and collected, except that the amount thereof shall be put in a separate column upon the tax roll, and the board of supervisors of the county shall cause the sum certified by the town board, to be levied upon the taxable property of such highway district. Such commissioner of highways shall with the assistance of the overseers of highways, in any road district which is to be charged with the payment for such machine after the completion of the assessment roll, and ten days before the meeting of the board of supervisors of the county, make and deliver to the supervisor of such town a list of the persons in such district or districts who are named in the last assessment roll of the town and chargeable with the payment of a tax for such machine. The commissioner or commissioners of highways may, also, with the approval of the town board,

Stone crushers and materials.

purchase and hold for the use of the town at large, one or more road machines, and pay for the same with money appropriated and set apart for highway purposes. It shall be the duty of the commissioner or commissioners of highways of each town to keep the road machines belonging to such town, or any road district or districts in such town in repair, if such repairs are reasonable, and pay the expenses thereof out of the general highway funds of the town, and also to provide a suitable place for housing and storage of all tools, implements and machinery that are owned by the town or by the several highway districts and cause these tools and implements and machinery to be stored therein when not in use. When such repairs upon any road machine belonging to any road district or districts shall exceed the sum of eight dollars in any one year, such expense shall be assessed and levied upon the property of such districts in the same manner as above provided for the collection of the purchase money of said machines, and when collected shall be paid to the commissioner or commissioners of highways of said town.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 11, and various amendments thereto. Amended by L. 1895, ch. 586, by L. 1896, ch. 987, and by L. 1898, ch. 155.

See L. 1895, ch. 717, Appendix, *post*, providing that highway commissioners, where the money system of highway labor has been adopted, must file their contracts with the town clerk. See Town Law, § 182, as to contracts being in name of town.

Road scraper left in road by commissioner, held to be an obstruction. (*Whitney v. Town of Ticonderoga*, 127 N. Y. 40.)

§ 7. Stone crushers and materials.—The town board and commissioner or commissioners of highways of any town may, when authorized by a majority vote of the electors voting thereon, by ballot, at the annual or at a special town meeting, purchase a machine for crushing

Custody of stone crushers.

stone, to be used, under the direction of the commissioner or commissioners of highways of said town, for the improvement of the highways thereof, and the commissioners of highways of any such town may, in any year, when authorized by a majority vote of the electors voting thereon, by ballot, at the annual or at a special town meeting, expend in said year a sum not exceeding two thousand dollars, for the purpose of purchasing stone, and quarrying, breaking, crushing and placing the same on the highways, in such road district or districts as the town board may direct and defraying the expenses of operating such machine, and shall present the account and vouchers for said purchases and expenses to the town board for audit, and the amount audited, together with the cost of such stone crushing machine, when not before included, shall be levied and collected as other town audits.

Revised from L. 1884, ch. 220. Amended by L. 1895, ch. 411.

See L. 1895, ch. 499, Appendix, *post*, authorizing town boards and highway commissioners to expend additional sums for grading and macadamizing highways.

See L. 1891, ch. 309, Appendix, *post*, as to the acquisition of gravel beds by condemnation or purchase.

§ 8. *Custody of stone crushers.*—Such machine, when purchased, shall be under the care and custody of the commissioners of highways of the town; and where there is an incorporated village constituting a separate highway district, in any town, they may, by an agreement with the trustees of the village, permit an equitable use of the machine to such separate village district.

Revised from L. 1884, ch. 220.

§ 9. *Additional tax.*—Whenever the commissioners of highways of any town shall determine, that the sum of five hundred dollars will be insufficient to pay the ex-

Extraordinary repairs of highways or bridges.

penses actually necessary for the improvement of highways and bridges, they may cause a vote to be taken by ballot at any town meeting, to be duly called, authorizing such additional sum to be raised as they may deem necessary for such purpose, not exceeding one-third of one per centum upon the taxable property of the town, as shown by the last assessment roll thereof.

Revised from L. 1832, ch. 274, and L. 1857, ch. 615, § 1.

See Town Law, §§ 33-34, as to method of taking vote. See § 130 ff. *post*, and County Law, § 60 ff., Appendix, *post*, as to joint liability of counties and towns for the improvement of bridges. See L. 1890, ch. 291, Appendix, *post*, as to the raising of an additional tax of \$300 for the erection of wire fences to prevent snow drifting in highway.

As to power of supervisors to authorize a town, under the County Law, to issue bonds for moneys raised to improve its highways. (*Ghiglione v. Marsh*, 23 App. Div. 61; *People v. McIntyre*, 154 N. Y. 628; *Berlin Bridge Co. v. Wagner*, 57 Hun, 346; County Law, §§ 12, 13, 14.)

Power of town to raise money by immediate taxation by vote at open town meeting for improvement of its roads and bridges. (*Birge v. Berlin Bridge Co.*, 133 N. Y. 477; *Berlin Bridge Co. v. Wagner*, 57 Hun, 346; *Hill v. Supervisors*, 12 N. Y. 58.)

Towns have no general power to borrow money for municipal purposes or to pay town charges. (*Wells v. Town of Salina*, 119 N. Y. 280.)

The act of 1857, ch. 615. (*Matter of Town Board*, 26 St. Rep. 285.)

§ 10. Extraordinary repairs of highways or bridges.—If any highway or bridge shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe, the commissioner of highways of the town in which such highway or bridge may be situated, may, with the consent of the town board, cause the same to be immediately repaired or rebuilt, although the expenditure of money required may exceed the sum raised for such purposes as hereinbefore provided; and the commissioners of highways shall present the proper vouchers for the expense thereof to the town board, at their next annual

Auditing expense thereof.

meeting, and the same shall be audited by them and collected in the same manner as amounts voted at town meetings.

Revised from L. 1858, ch. 103, § 1, as amended by L. 1865, ch. 442, § 1. Amended by L. 1895, ch. 606.

See § 142, *post*, as to repairing bridges for which two or more towns are jointly liable; § 145, *post*, as to the erection of iron bridges; notes under §§ 16, 130, 134, *post*, as to liability of towns for the repair of bridges.

Commissioners of highways have no power to contract a debt against the town by borrowing money for the repair of roads and bridges. (*Barker v. Loomis*, 6 Hill, 464; *Van Alstyne v. Freday*, 41 N. Y. 174; *People v. Supervisors*, 93 N. Y. 397; *People v. Burrell*, 14 Misc. 217.)

A commissioner of highways has no authority to bind a town, except such as is expressly conferred by statute. (*Mather v. Crawford*, 36 Barb. 565.)

Power of highway commissioners under this section to borrow money upon the credit of the town to pay for bridges (*Boots v. Washburn*, 79 N. Y. 207.)

Commissioners of highways have no general authority to bind a town by their contracts save in exceptional cases prescribed by statute. (*People ex rel. Everett v. Supervisors*, 93 N. Y. 397; *Berlin Bridge Co. v. Wagner*, 57 Hun, 346.)

As to what constitutes "consent of town board." (*People ex rel. State v. Smith*, 64 St. Rep. 420.)

Commissioners of highways must show that they have attempted to avail themselves of this statutory provision, if town is to be relieved from liability to one injured by their neglect to repair a defect in a highway known to them. (*Whitlock v. Town of Brighton*, 2 App. Div. 24.)

Commissioner of highways has exclusive control of the construction of a bridge, after it is ordered by the town board. (*People ex rel. Groton Bridge Co. v. Town Board*, 92 Hun, 587.)

When town board consents that a commissioner of highways shall construct a bridge, it becomes its duty to audit his bill on the merits when duly presented. (*People v. Smith*, 83 Hun, 432.)

See *Bruner v. Lewis*, 22 St. Rep. 93.

§ 11. *Auditing expense thereof.*—The town board may be convened in special sessions by the supervisor, or in his absence, by the town clerk, upon

Accounts, how made out.

the written request of any commissioners of highways, and the bills and expenses incurred in the erection or repairs of any such highways or bridges, may then be presented to, and audited by the town board; and the supervisor and town clerk shall issue a certificate, to be subscribed by them, setting forth the amount so audited and allowed, and in whose favor, and the nature of the work done and material furnished, and such certificate shall bear interest from its date, and the amount thereof, with interest, shall be levied and collected in the same manner as other town expenses.

Revised from L. 1858, ch. 103, § 2.

Mandamus will lie to compel a town board to audit a claim for moneys expended in rebuilding a bridge by a commissioner of highways who was authorized so to do under the provisions of § 10 of the Highway Law. (*People v. Smith*, 83 Hun, 432; *People v. Town Board*, 92 Hun, 585.)

A town board acts judiciously in determining its liability, and its action cannot be reviewed or controlled by the courts through a writ of mandamus. (*People v. Barnes*, 114 N. Y. 317.)

Where a town board has consented to the repairing of a bridge it must allow the reasonable expense thereof. (*People v. Smith*, 83 Hun, 432.)

§ 12. *Accounts, how made out.*—No account for services rendered, or material furnished according to the provisions of this chapter, shall be allowed by such board unless the same shall be verified in the same manner as town accounts are required by law to be verified, nor unless the commissioners of highways shall certify that the service has been actually performed, and the material was actually furnished, and that the same was so performed or furnished by the request of such commissioners; and the town board may require and take such other proof as they may deem proper, to establish any claim for such labor and material, and the value thereof.

Revised from L. 1858, ch. 103, § 3.

See Town Law, § 167, as to verification of accounts.

Unsafe toll-bridge.

§ 13. *Unsafe toll-bridge.*— Whenever complaint in writing, on oath, shall be made to the commissioners of highways of any town in which shall be, in whole or in part, any toll-bridge belonging to any person or corporation, representing that such toll-bridge has from any cause become, and is unsafe for the public use, such commissioners of highways shall forthwith make a careful and thorough examination of such toll-bridge, and if upon the examination thereof, they shall be of the opinion that the same has from any cause become dangerous or unsafe for public use, they shall thereupon give immediate notice to the owners of such toll-bridge, or to any agent of such owners, acting as such agent, in respect to such bridge, that they have on complaint made, carefully and thoroughly examined the bridge, and found it to be unsafe for the public use. Such owners shall thereupon immediately commence repairing the same, and cause such repairs to be made within one week from the day of such notice given, or such reasonable time thereafter as may be necessary to thoroughly repair the bridge, so as to make it in all respects, safe and convenient for public use; and for neglect to take prompt and effective measures so to repair the bridge, its owners shall forfeit twenty-five dollars; and shall not demand or receive any toll for using the bridge, until the same shall be fully repaired; and the commissioners of highways shall cause such repairs to be made, and the owners of the bridge shall be liable for the expense thereof, and for the services of the commissioners at two dollars per day; and upon the neglect or refusal to pay the same upon presentation of an account thereof, the commissioners of highways may recover the same by action, in the name of the town.

Revised from L. 1873, ch. 448.

Drainage, &c., pipes in highway.

§ 14. *Drainage, sewer and water pipes in highways.*—The commissioners of highways may upon written application of any resident of their town, grant permission to lay and maintain drainage, sewer and water pipes and hydrants under ground, within the portion therein described, of any highway within the town, but not under the traveled part of the highway, except to cross the same, for the purposes of sewerage, draining swamps or other lands, and supplying premises with water, upon condition that such pipes and hydrants shall be so laid as not to interrupt or interfere with public travel upon the highway. The consent of the commissioner shall be executed in duplicate, signed by him and indorsed with the written approval of the supervisor and the acceptance of the applicant, and one of such duplicates shall be delivered to the applicant and the other filed with the town clerk. The consent shall also contain a provision to the effect that it is granted on the condition that the applicant will replace all earth removed, and leave the highway in all respects in as good condition as before the laying of said pipes; that the applicant will keep such pipes and hydrants in repair and save the town harmless from all damages which may accrue by reason of their location in the highway; that upon notice by the commissioner, the applicant will make any repairs required for the protection or preservation of the highway; that upon his default such repairs may be made by the commissioner at the expense of the applicant, and that such expense shall be a lien prior to any other lien upon the land benefited by the use of the highway for such pipes or hydrants; and that the commissioner may also, upon the applicant's default, revoke the permission for the use of the highway, and remove therefrom such pipes or hydrants.

Revised from L. 1873, ch. 63, as amended by L. 1886, ch. 452. Amended by L. 1897, ch. 204.

See note under § 100, *post*, as to "Uses of Highways."

See *Nicoll v. Sands*, 131 N. Y. 19.

Actions for injuries to highways.

§ 15. *Actions for injuries to highways.*—The commissioners of highways may bring an action, in the name of the town, against any person or corporation, to sustain the rights of the public in and to any highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway.

Revised from L. 1855, ch. 255, and L. 1878, ch. 49.

See § 153, *post*, and notes thereunder as to penalties for injuries to highways; § 164, *post*, as to actions by commissioners to recover penalties.

See Town Law, § 132, providing that actions be begun in name of town; Railroad Law, § 11, Appendix, *post*, as to duty of railroad at intersection with highway.

See note under § 100, *post*, as to "Uses of Highways;" note under § 157, *post*, as to duties of railroads at crossings.

As to duty of railroad in restoring and maintaining highway. (*Allen v. Buffalo, &c. Co.*, 151 N. Y. 434.)

A railroad corporation, having its rails in a public highway, must lay and keep them so as to cause as little injury as possible. (*Schild v. R. R. Co.*, 133 N. Y. 449; *Wiley v. Smith*, 25 App. Div. 351.)

The restoration of a highway to its former state is a continuous duty, and the right to enforce it is not barred by the Statute of Limitations. (*Town of Windsor v. D. & H. C. Co.*, 92 Hun, 127.)

Commissioner of highways has no power to dictate to a railroad company how it shall restore a highway to its original condition, but is authorized to maintain an action to enforce the performance of this duty. (*Post v. West Shore R. R.*, 123 N. Y. 580.)

Duty of a railroad to restore a highway to its former state does not relieve a highway commissioner from caring for the approaches to the railroad crossing. (*Bryant v. Town of Randolph*, 133 N. Y. 70; *Buchholtz v. Railroad*, 66 Hun, 377.)

Sufficiency of a complaint by a town to compel a railroad company, which has given notice of its abandonment of a highway, to surrender the whole. (*Town of Palatine v. Railroad Co.*, 22 App. Div. 181.)

Liability of towns for defective highways.

The town has a right of action for any injury caused to its bridges, even though such injury be caused by the state. (*Bidelman v. State*, 110 N. Y. 232.)

As to the liability of a municipal corporation for injuries to a bridge it has ordered removed. (*Turnpike Co. v. Buffalo*, 58 N. Y. 639.)

See *People v. Dettmer*, 26 App. Div. 327, as to right of Brooklyn park commissioners to bring an action under this section.

§ 16. *Liability of towns for defective highways.*—Every town shall be liable for all damages to person or property, sustained by reason of any defect in its highways or bridges, existing because of the neglect of any commissioner of highways of such town. No action shall be maintained against any town to recover such damages, unless a verified statement of the cause of action shall have been presented to the supervisor of the town, within six months after the cause of action accrued; and no such action shall be commenced until fifteen days after the service of such statement.

Revised from L. 1881, ch. 700, § 1.

This section was evidently intended to preserve the law as established by the statute of 1881.

See § 4, subd. 1 and 7, *ante*, as to duty of highway commissioners to repair highways.

See §§ 104, 105, *post*, as to liability for encroachments upon highway.

The town in its corporate character has no control over the highways. It cannot lay out a highway or discontinue one. It is not liable for failure to keep highways in repair. Highways are not the property of the town, and the use is in the public not for the benefit of the inhabitants of the town alone, but of the whole community. The town exercises but two important functions in respect to highways; it elects the commissioners of highways and determines, through the electors in town meeting, what sum shall be raised by taxation for the improvement of highways and bridges. The election of commissioners of highways by the town is a convenient method of designating suitable public agents to discharge the duties imposed for general public purposes upon those officers, and the state has committed to the portion of the public residing in the locality to

Liability of towns for defective highways.

determine within certain limits what amount of taxation shall be imposed for the support of highways. These circumstances do not, however, make highway officers the agents of the town, so as to subject the town to liability for their acts. (*People v. Auditors of Esopus*, 74 N. Y. 310; *Morey v. Town of Newfane*, 8 Barb. 645; *Town of Fishkill v. Plankroad Co.*, 22 Barb. 645; *Town of Gallatin v. Loucks*, 21 Barb. 578; *Town of Galen v. Plankroad Co.*, 27 Barb. 543; *Gailor v. Herrick*, 42 Barb. 79; *People v. Supervisors*, 93 N. Y. 397; *Robinson v. Fowler*, 80 Hun, 101; *Hughes v. Bingham*, 135 N. Y. 347.)

The impairment of a public highway may be no less such by an obstruction placed in it than by a physical disturbance. (*Whitney v. Ticonderoga*, 127 N. Y. 40.)

Duty of a town to see that its streets and highways are in a safe condition, is measured by circumstances. (*Glasier v. Town of Hebron*, 131 N. Y. 447.) Same held regarding duty of commissioners of highways. (*Dow v. Town of Oyster Bay*, 84 Hun, 510; *Clapp v. Town of Ellington*, 87 Hun, 542; *Waller v. Town of Hebron*, 5 App. Div. 577; *Foels v. Town of Tonawanda*, 75 Hun, 363.)

The responsibility of the town is measured by the responsibility of the commissioner, who is chargeable only where the injury is due to his failure to exercise ordinary care in the performance of his duties. (*Lane v. Town of Hancock*, 142 N. Y. 510; *Riley v. Town of Eastchester*, 18 App. Div. 94.)

Town is not liable unless upon the same facts its commissioner of highways would have been liable before the passage of the act. (*Clapper v. Town of Waterford*, 131 N. Y. 382; *Bryant v. Town of Randolph*, 133 N. Y. 70; *Lane v. Town of Hancock*, 142 N. Y. 510.)

When from the facts of the case a town could not recover over against the commissioner of highways, the plaintiff in an action to recover damages for an injury sustained by reason of an alleged defect in the highway, could not recover against the town. (*Waller v. Town of Hebron*, 5 App. Div. 577.)

It is the negligence of the highway commissioners which gives the right of action against their respective towns. (*Bidwell v. Town of Murray*, 40 Hun, 190; *Farman v. Town of Ellington*, 46 Hun, 41.)

As to evidence of negligence of town not being evidence of negligence of highway commissioner. (*Glasier v. Town of Hebron*, 41 St. Rep. 752.)

Liability of city or village not measured by liability of its highway commissioners as in case of town. (*Burns v. Yonkers*, 83 Hun, 211.)

Liability of towns for defective highways.

However it may be in cities and in incorporated villages, in towns there may be defects in highways, very serious ones, without negligence on the part of the commissioner of highways. Where a commissioner has not enough money to repair all the roads in his town, a mistake in judgment after such careful consideration as the circumstances require is not negligence. (*Patchen v. Town of Walton*, 17 App. Div. 158.)

If highway commissioners err in judgment in expending such funds as they have, when the same are not sufficient to make all needed repairs, the town is not liable. (*Monk v. Town of New Utrecht*, 104 N.Y. 552.)

This discretion must be reasonably exercised. (*Ivory v. Town of Deer-park*, 116 N.Y. 476.)

Highway commissioners are not chargeable with negligence unless they had knowledge of the necessity of repairing bridges; but they must inspect all bridges and use due diligence to ascertain defects. (*Hicks v. Chaffee*, 13 Hun, 293; *Lawson v. Woodstock*, 20 Weekly Dig. 570; *Cousins v. Carncross*, 21 Weekly Dig. 435; *Bidwell v. Murray*, 40 Hun, 190.)

Commissioners of highways having the requisite funds in hand or under their control, are bound to repair bridges which are out of repair, they having notice of their condition; and they are bound to repair them with reasonable and ordinary care and diligence, and if they omit this duty, they are liable to individuals who sustain special damages from such neglect. Notice to the commissioners may be constructive notice. (*Hover v. Barkhoof*, 44 N.Y. 113; *Smith v. Wright*, 24 Barb. 176; *Mackey v. Locke*, 28 St. Rep. 218.)

Highway commissioners are liable individually for any injury resulting from their own neglect to repair a highway, if they have funds provided for such a purpose, to any person who has sustained damages. (*People v. Board of Town Auditors*, 75 N.Y. 316; *Bullock v. Town of Durham*, 64 Hun, 380.)

Individual liability of commissioners for injuries received in consequence of failure to repair a highway. (*Babcock v. Gifford*, 29 Hun, 186; *Lament v. Haight*, 44 How. Pr. 1.)

Highway commissioners are liable to persons injured on a bridge out of repair, when there are funds on hand with which to repair. (*Smith v. Wright*, 24 Barb. 170; s. c., 27 Barb. 621.)

As to the indictment of highway commissioners for failing to repair a bridge. (*People v. Adsit*, 2 Hill, 619; *People v. Mohawk Bridge Co.*, 7 Alb. Law Jour. 232.)

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Liability of commissioners for the acts of their predecessors. (*Gould v. Booth*, 66 N. Y. 62.)

For failure to repair a bridge between adjoining towns the highway commissioners of such towns are jointly liable. (*Bryan v. Landon*, 3 Hun, 500; *Theall v. Yonkers*, 21 Hun, 265.)

Where two towns are jointly liable for the care of a bridge under a legislative act, an action will lie against them jointly for failure to repair. (*Oakley v. Mamaroneck*, 39 Hun, 448.)

It is not necessary to sue two towns jointly, although they are jointly liable for the negligence of their highway commissioners. (*Clapp v. Town of Ellington*, 87 Hun, 542.)

A highway commissioner is negligent in leaving a bridge partly unfinished and in a dangerous condition, even though he be out of funds for its completion. (*Rector v. Pierce*, 3 S. C. 416; see, also, *Stacy v. Phelps*, 47 Hun, 54, and *Lane v. Wheeler*, 35 Hun, 606.)

Liability of town for existence of snowdrift within one day after ceasing of storm. (*Dorn v. Town of Oyster Bay*, 84 Hun, 510.)

Commissioners of highways owe no greater duty in the matter of keeping a road in repair, to bicyclists than to other travelers. (*Sutphen v. Town of Hempstead*, 80 Hun, 409.)

The filing with the supervisor of the statement required by this section is a condition precedent to the maintenance of an action. (*Borst v. Town of Sharon*, 24 App. Div. 599; *Reining v. Buffalo*, 102 N. Y. 308; *Curry v. Buffalo*, 135 N. Y. 366.)

No substitute for the statement or waiver thereof will be of effect. (*Borst v. Town of Sharon*, 24 App. Div. 599.)

Condition that a verified statement of the cause of action shall have been presented to the supervisor within six months, is not unconstitutional. (*Olmstead v. Town of Pound Ridge*, 71 Hun, 25.)

In an action against a town for damages, the complaint must allege that the town had or could obtain funds for repairing its bridges. (*Eveleigh v. Hounsfieeld*, 34 Hun, 140; but see *Oakley v. Mamaroneck*, 39 Hun, 448.)

It is a defense to an action for damages against a commissioner of highways for injuries sustained in consequence of a defective highway to show that he was without the necessary funds to make the repairs and without the power to raise such funds. (*Clapper v. Town of Waterford*, 131 N. Y. 382; *Barker v. Loomis*, 6 Hill, 463; *People ex rel. v. Supervisors*,

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93 N. Y. 397; *Hover v. Barkhoof*, 44 N. Y. 113; *Hines v. City of Lockport*, 50 N. Y. 236; *Monk v. Town of New Utrecht*, 104 N. Y. 552.)

Lack of funds to repair is a good defense on the part of highway commissioners, and the burden is on them to show it. (*Bidwell v. Murray*, 40 Hun, 190; *Getty v. Hamlin*, 46 Hun, 1.)

The lack of funds for repairs is an affirmative defense to be alleged and proven by the defendant. (*Lane v. Town of Hancock*, 67 Hun, 623.)

Where the highway commissioners of a town are not furnished with sufficient funds to repair all the highways and bridges of a town, it is within their discretion as to which they shall repair and they cannot be held responsible in a civil action for damages resulting from the fact that certain highways or bridges are out of repair. (*Garlinghouse v. Jacobs*, 29 N. Y. 297; *Smith v. Wright*, 27 Barb. 627.)

Commissioners not bound to repair either roads or bridges until necessary funds are provided. (*Barker v. Loomis*, 6 Hill, 464.)

In order to make the defense as to funds complete, it must appear not only that there was a lack of funds, but an inability, by the exercise of reasonable diligence, to obtain them. Section 10 of this act provides for the raising of funds for extraordinary repairs. (*Clapper v. Town of Waterford*, 151 N. Y. 389; *Whitlock v. Town of Brighton*, 2 App. Div. 23; *Young v. Town of Macomb*, 11 App. Div. 480; *McMahon v. Town of Salem*, 25 App. Div. 1.)

It is no defense in an action for damages, caused by a defective highway, that the funds in the hands of the commissioner had been designed for payment upon ordinary contracts for work. (*Rhines v. Town of Royalton*, 40 St. Rep. 662.)

The necessity of barriers along a road is usually a question of fact for the jury. (*Waller v. Town of Hebron*, 5 App. Div. 577; *Glasier v. Hebron*, 82 Hun, 311; *Burns v. City of Yonkers*, 83 Hun, 211; *Van Gassbeck v. Saugerties*, 82 Hun, 415; *Lane v. Town of Hancock*, 67 Hun, 623.)

The fact that a road which ascends gradually, which is in excellent condition and which experience has not shown to be dangerous, has no guards upon its sides, does not necessarily charge the town with negligence. (*Patchen v. Town of Walton*, 17 App. Div. 158.)

Duty of highway commissioner to care for approaches to a railroad crossing. (*Bryant v. Town of Randolph*, 133 N. Y. 70.)

The defendant, a contractor with the state, held liable for failing to

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properly safeguard the highway, while constructing a bridge. (*Weber v. Buffalo Ry. Co.*, 20 App. Div. 292.)

Discussion of the liability of a village for failing to guard a dangerous portion of a highway by a railing. (*Warner v. Village of Randolph*, 18 App. Div. 458.)

The existence of an unguarded sluiceway open on each side of a village highway, which has existed for a number of years and has caused numerous accidents is itself sufficient evidence of the negligence of the highway commissioner. (*Rankert v. Town of Junius*, 25 App. Div. 470.)

The fact that before the occurrence of an accident at a defective bridge, the highway commissioners had procured materials for its repair, and did repair it on the following day, warrants the inference that they had funds, or means to procure funds, to repair the bridge. (*Getty v. Town of Hamlin*, 8 Supp. 191.)

The fact that a road has been used as a public highway for many years and has been so recognized by town officers, renders the town liable to a traveller for injuries sustained by reason of negligence of highway commissioners to keep it in repair. (*Ivory v. Town of Deerpark*, 116 N. Y. 476.)

Town is not liable for personal injuries caused by the negligence of the highway commissioner, to a workman, engaged by him, to repair the road. (*Robinson v. Town of Fowler*, 80 Hun, 101.)

Where a highway commissioner in making repairs to a highway found it necessary to shut off water from plaintiff's mill and it was shown that he prosecuted his work with diligence, he is not held liable in damages for the loss to the mill owner. (*Kerr v. Joslin*, 49 St. Rep. 257.)

As to the liability of the State in regard to its bridges. (*Carpenter v. Cohoes*, 81 N. Y. 21; *Schomer v. Rochester*, 15 Abb. N. C. 57; *Splitdorf v. State*. 108 N. Y. 205; *Woodman v. State*, 127 N. Y. 397.)

A county is not liable for its neglect to keep a public bridge in repair. (*Ensign v. Supervisors of Livingston*, 25 Hun, 20.)

Although the duty of maintaining a bridge is imposed upon a county by special act, the county is not liable for damages for injuries arising from the neglect of the county to make repairs. (*Ensign v. Supervisors*, 25 Hun, 20; see also notes under § 130, *post*; *Markey v. County of Queens*, 154 N. Y. 675.)

A city must keep its streets in reasonable repair. (*Smith v. Mayor*, 17 App. Div. 438.)

As to the liability of villages incorporated under Laws 1870, ch. 291, to

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repair bridges within their corporate limits. (*Washburn v. Mt. Kisco*, 35 Hun, 329.)

Bridges erected by private corporations must be kept in repair by such corporations; there is no liability of the town. (*Roe v. Elmendorf*, 52 How. Pr. 232, *Evers v. Hudson River Bridge Co.*, 18 Hun, 144; *Babcock v. N. Y. C. R. R. Co.*, 20 Weekly Dig. 477; *Heacock v. Sherman*, 14 Wend. 58; *Dygert v. Schenck*, 23 Wend. 446.)

As to the liability for injuries received upon the New York and Brooklyn Bridge. (*Walsh v. New York*, 107 N. Y. 220; *Hannon v. Agnew*, 96 N. Y. 439; *Walsh v. Trustees, &c.*, 96 N. Y. 427.)

As to what evidence is admissible to show that a bridge forming part of a city street was controlled by the city. (*Schomer v. Rochester*, 15 Abb. N. C. 57.)

When this statute will not be construed to act retrospectively. (*Frasier v. Town of Tompkins*, 30 Hun, 168; *Bullock v. Town of Durham*, 46 St. Rep. 460.)

Further cases as to the liability of towns and cities for damages arising from defective and unsafe highways and bridges. (*Maginnis v. Brooklyn*, 26 St. Rep. 689; *Herrington v. Phoenix*, 41 Hun, 270; *Langlois v. Cohoes*, 58 Hun, 226; *Wood v. Watertown*, 58 Hun, 298; *Clapp v. Ellington*, 51 Hun, 58; *Phillips v. Macedon*, 27 Weekly Dig. 331; *Taylor v. Constable*, 57 Hun, 371; *Schomer v. Rochester*, 15 Abb. N. C. 57; *Carpenter v. Cohoes*, 81 N. Y. 21; *Tierney v. Troy*, 41 Hun, 140; *Farman v. Town of Ellington*, 46 Hun, 41; *Clapper v. Town of Waterford*, 62 Hun, 170; *Stone v. Town of Poland*, 58 Hun, 21; *Bullock v. Town of Durham*, 64 Hun, 380; *McGuinness v. Town of Westchester*, 66 Hun, 356; *Smith v. Town of Clarkstown*, 69 Hun, 155; *Oakley v. Town of Mamaroneck*, 39 Hun, 448; *Read v. Buffalo*, 20 Alb. Law Jour. 55.)

See *Waller v. Town of Hebron*, 5 App. Div. 577; *Riley v. Town of Eastchester*, 18 App. Div. 94; *Jones v. Utica*, 16 Hun, 441.

§ 17. Action by town against commissioners.—If a judgment shall be recovered against a town for damages to person or property, sustained by reason of any defect in its highways, or bridges, existing because of the neglect of any commissioner of highways, such commissioner shall be liable to the town for the amount of the judgment, and

Audit of damages without action.

interest thereon; but such judgment shall not be evidence of the negligence of the commissioner in the action against him.

Revised from L. 1881, ch. 700, §§ 2, 3.

See § 4, subd. 1 and 7, *ante*, as to duty of highway commissioners to repair highways.

See notes under § 16, *ante*.

Code of Civil Procedure, § 1931, as to judgments against highway commissioners:

§ 1931. WHEN EXECUTION AGAINST OFFICER NOT TO ISSUE.—An execution cannot be issued upon a judgment for a sum of money, rendered against an officer in an action or special proceeding brought by or against him, in his official capacity, pursuant to this article; except where it is rendered against the trustee or trustees of a school district, or the commissioner or commissioners of highways of a town. In either of those cases, an execution may be issued against and be collected out of the property of the officer, and the sum collected must be allowed to him, in the settlement of his official accounts, except as otherwise specially prescribed by law.

§ 18. *Audit of damages without action.*—The town board of any town may audit as a town charge, in the same manner as other town charges are audited, any one claim not exceeding five hundred dollars, for damages to person or property, heretofore or hereafter sustained by reason of defective highways or bridges in the town, if in their judgment it be for the interest of the town so to do; but no claim shall be so audited, unless it shall have been presented to the supervisor of the town, within six months after it accrued, nor if an action thereon shall be barred by the statute of limitations. The town board may also audit any unpaid judgment heretofore or hereafter recovered against a commissioner of highways for any such damages, if such town board shall be satisfied that he acted in good faith, and the defect causing such damage did not exist because of the negligence or misconduct of

Reports of commissioners.

the commissioner, against whom such judgment shall have been recovered.

Revised from L. 1881, ch. 700, § 4, as amended by L. 1889, ch. 146.

See § 154, *post*, as to liability of town for bridge breaking. See Town Law, §§ 162-170, as to auditing of town charges.

No absolute liability imposed upon towns for all judgments recovered against a sole commissioner of highways in actions prosecuted by him in his official name. The board of town auditors have power to determine whether the action was rightfully prosecuted.

In determining as to the liability of the town the board acts judicially, and its action cannot be reviewed or controlled by the courts through a writ of mandamus. (*People v. Barnes*, 114 N. Y. 317.)

§ 19. *Reports of commissioners.*—The commissioners of highways of each town shall make to the town board, at its first meeting in each year, a written report stating,

1. The labor assessed and performed,
2. The sum received by them for penalties, commutations and all other sources, and an itemized account of all moneys paid out during the year, with receipts in full by the respective parties to whom such money was paid;
3. The improvements which have been made on the highways and bridges, during the year immediately preceding such report, and the state of such highways and bridges; they shall also make at the second meeting of said board in each year, a statement of the improvements necessary to be made on such highways and bridges, and an estimate of the probable expense thereof, beyond what the labor to be assessed in that year will accomplish; a duplicate of which shall be delivered by the commissioners to the supervisor of the town, who shall present such duplicate statement to the board of supervisors, who shall cause the amount so estimated, not exceeding five hundred dollars in any one year, to be assessed, levied

General duties of overseers.

and collected, in such town, in the same manner as other town charges.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, §§ 3, 4, as amended by L. 1884, ch. 396, and from L. 1873, ch. 395, § 7.

See Town Law, §§ 161-162, as to annual meetings of town board. See § 69, *post*, as to reports of overseers to commissioners.

See *Berlin Bridge Co. v. Wagner*, 57 Hun, 346.

§ 20. General duties of overseers.—Each overseer of highways in every town, shall

1. Repair and keep in order the highways within his district.

2. Warn all persons and corporations assessed to work on the highways in his district, to come and work thereon.

3. Cause the noxious weeds within the bounds of the highway within his district, to be cut down or destroyed twice in each year, once before the first day of July, and again before the first day of September; and the requisite labor therefor shall be considered highway work.

4. Collect all fines and commutation money, and execute all lawful orders of the commissioners.

5. Cause all loose stone lying in the beaten track of every highway within his district, to be removed once in every month, from the first day of April until the first day of December, in each year. Stones so removed shall not be thrown into the gutter, nor into the grass adjoining such highways, but they shall be conveyed to some place, from which they will not work back or be brought back into the track by the use of road machines or other implements used in repairing such highways.

Amended by L. 1898, ch. 352.

6. Cause the monuments erected or to be erected, as the boundaries of highways, to be kept up and renewed, so

Opening obstructed highways.

that the extent of such highway boundaries may be publicly known.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, §§ 6, 7.

See § 4, subd. 5, 6, *ante*, as to appointment and duties of overseers; also, §§ 21-24, 31, 34, 35, 42, 46, 60-71, *post*; Town Law, §§ 51, 56, Appendix, *post*, and Public Officers Law, §§ 10-20, as to official oath and undertaking of overseer; Town Law, § 55, Appendix, *post*, as to penalty for refusal to serve; County Law, § 72, Appendix, *post*, as to erection of highway monuments by supervisors; §§ 70, 71, *post*, as to noxious weeds generally; Town Law, § 22, sub. 5, Appendix, *post*, as to regulation of noxious weeds by town meeting, and County Law, § 12, sub. 7, Appendix, *post*, as to regulation by supervisors; L. 1891, ch. 309, Appendix, *post*, as to the acquisition of gravel for highway purposes by overseers.

Overseers of highways are subordinate officers acting under the direction of the commissioners, who have the general supervision of the subject of the repair and maintenance of the highways. (*Farman v. Town of Ellington*, 46 Hun, 41; *Bartlett v. Crozier*, 17 Johns. 439; *Smith v. Wright*, 27 Barb. 621; *Day v. Day*, 94 N. Y. 159.)

The duty of overseers of highways does not depend upon the direction of the commissioners to do it. The statute changes the former with it. (*McFadden v. Kingsbury*, 11 Wend. 667; *Farman v. Town of Ellington*, 46 Hun, 41.)

Highway officers may not take soil from the land of an owner to use for highway purposes at other places than on his land. (*Cotanch v. Grover*, 57 Hun, 272.)

The jurisdiction of overseers in the performance of their duty as to repairing extends over every part of the highway. (*Anderson v. Van Tassel*, 53 N. Y. 631.)

An overseer has no right in making repairs to change a water-course so as to flood the lands of an abutting owner. (*Moran v. McClearne*, 63 Barb. 185.)

As to duty of overseer to keep bridge in repair. (*Taylor v. Town of Constable*, 57 Hun, 371.)

§ 21. *Opening obstructed highways.*—Whenever the labor in any district has been worked out, commuted for, or returned to the supervisor, and the highways are

Penalties against overseers.

obstructed by snow, or otherwise, and notice has been given to the overseer, in writing, by any two or more inhabitants of the town, liable to payment of highway tax, requesting the removal of such obstruction, the overseer of highways in such district, shall immediately call upon all persons and corporations liable to highway tax therein to assist in removing such obstructions; and such labor, so called for by the overseer, shall be assessed upon those liable to perform the same, in proportion to their original assessments. And all persons so called out and failing to appear at the place designated by the overseer, or to commute at a dollar a day, within twenty-four hours after due notice, shall be liable to a fine at the rate of one dollar and fifty cents a day, for each day's labor they may be required to perform, which fine shall be collectible by the overseer, as such, by action in justice's court, and shall be applied to the purposes specified in this section. The overseer shall be liable to a penalty of five dollars per day for every day he neglects, without good and sufficient reasons, to have such highway opened without delay after receiving such written notice, the penalty to be collected in justice's court, by the person first suing for the same, and the penalty shall be paid over to the commissioners of highways for the use of the town.

Revised from L. 1868, ch. 791, § 3, as amended by L. 1869, ch. 593.

See § 72, *post*, as to abatement of highway tax by the removal of fences to prevent snow-drifting. See L. 1890, ch. 291, Appendix, *post*, as to the erection of wire fences for same purpose.

§ 22. *Penalties against overseers.*—Every overseer of highways who shall refuse or neglect,

1. To warn the persons and corporations assessed to work on the highways, when he shall have been required so to do, by the commissioners or either of them.

Penalties, how collected.

2. To collect the moneys that may arise from fines or commutations.

3. To perform any of the duties required by this chapter, or which may be enjoined on him by the commissioners of highways of his town, and for the omission of which no other penalty is provided, shall for every such refusal or neglect, forfeit the sum of ten dollars.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 16.

The only remedy for an injury sustained on account of the neglect of the overseer to repair a bridge is an action for the penalty. A civil action will not lie. (*Bartlett v. Crozier*, 17 Johns. 439.)

An overseer of highways may, upon his own motion, continue to litigate an action brought against him for an official act, after judgment against him, and demand indemnity from the town for the costs thereafter incurred. (*People v. Auditors of Esopus*, 74 N. Y. 310.)

§ 23. *Penalties, how collected.*—The commissioners of highways shall prosecute, in the name of the town, every overseer of highways, for any penalties known to the commissioners to have been incurred by the overseer. They shall also upon the complaint of any resident of the town, that any such penalty has been incurred, prosecute such overseer therefor, if satisfied that the complaint is well founded. The costs and expenses incurred by the commissioners in good faith, in such proceedings, shall be a town charge, to be audited by the town board. If the commissioners refuse or neglect to prosecute for any such penalty for thirty days after such complaint shall have been made, the complainant may prosecute therefor in the name of the town upon indemnifying the town for the costs and expenses of such prosecution, in such manner as the supervisor may approve. If the commissioner shall neglect or refuse to prosecute for any such penalty, knowing that the same has been incurred, he shall be liable to a penalty of ten dollars for every such neglect or

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refusal, to be recovered by action, in the name of the town, brought by the supervisor, or by any taxpayer of the town who may indemnify the town, for the costs and expenses of the action, in such manner as the supervisor may approve.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, §§ 16, 17, 18.

See *McFadden v. Kingsbury*, 11 Wend. 667.

§ 24. Compensation of overseers.—If any overseer shall be employed more days in executing the several duties enjoined upon him by this chapter, than he is assessed to work on the highways, he shall be paid for the excess, at the rate of twelve and a half cents per hour for each day, and be allowed to retain the same out of the money which may come into his hands under this chapter; but he shall not be permitted to commute for the days he is assessed.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 13, as amended by L. 1880, ch. 308, § 1.

See L. 1870, ch. 311, Appendix, *post*, as to employment of overseers in dividing a highway on the line between cities or towns.

§ 25. Division of town into highway commissioner districts.—When a town has determined upon having three commissioners of highways, the town board may at a regular or special meeting thereof divide the town into three highway commissioner districts, and assign one of such districts to each commissioner of highways. Notice of such division, containing a brief and accurate description of the boundaries of each district and the name of the commissioner assigned thereto, shall be published once a week for two successive weeks in a newspaper published in such town, or if no newspaper be published therein, such notice shall be posted in at least six conspicuous places in such town. After a town is divided, the

Duties of commissioner in each district.

commissioner shall be elected or appointed, so that at all times one commissioner shall reside in each district.

Added by L. 1898, ch. 127.

§ 26. *Duties of commissioner in each district.*—When a town is so divided, the commissioners shall apportion to each district the moneys raised and collected from the town at large for highway purposes and the commissioner assigned to or residing in a district shall expend the money so apportioned to his district upon the highways and bridges situated in or upon the borders thereof. Each commissioner shall cause the highways and bridges in his district to be kept in repair, and shall perform all the duties relating thereto, which the commissioners of highways of the town, except for such division, would perform. His powers and duties as to the supervision, repair, construction and improvements of the highways and bridges within his district shall be exclusive. As to all other powers and duties he shall act in conjunction with the other commissioners.

Added by L. 1898, ch. 127.

Assesessment for highway labor.

ARTICLE II.

ASSESSMENT FOR HIGHWAY LABOR.

SECTION 30. Meetings of commissioners.

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32. Non-resident lands.
33. Assessments of highway labor, how made.
34. Copies of lists delivered to overseers.
35. Names omitted.
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37. Credit on private roads.
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44. Abatement of tax for shade trees.
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51. Vote thereon.
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54. (Adoption of county road system.)
55. (County engineer.)
56. (Expenses, how paid.)
57. (Issue of bonds, etc.)
58. (County roads under charge of supervisors and county engineer.)
- (59a. Proceeds of county bonds.)

Meetings of commissioners.

SECTION 30. *Meetings of commissioners.*—The commissioners of highways of each town shall meet within eighteen days after the annual town meeting, at the town clerk's office, on such day as they shall agree upon, and afterwards at such other times and places as they shall think proper.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, § 20.

§ 31. *Lists of inhabitants.*—Each of the overseers of highways shall deliver to the clerk of the town, within sixteen days after his appointment, a list subscribed by him, of the names of all the inhabitants in his highway district, who are liable to work on the highways; and the town clerk shall deliver such lists to the commissioners of highways.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, §§ 21, 23.

See notes under § 33, *post*, as to exemptions from highway taxes.

The provision requiring the overseer to deliver a list to the town clerk is merely directory. His omission to do so does not avoid the assessment made by the commissioners against persons liable. (*Rinehart v. Young*, 2 Lans. 354.)

See *Fowler v. Westervelt*, 17 Abb. Pr. 59.

§ 32. *Non-resident lands.*—The commissioners of highways in each town, before making the assessment of highway labor, shall make out a list and statement, of the contents of all unoccupied lots, pieces or parcels of land within the town, owned by non-residents; every lot so designated, shall be described in the same manner as is required from assessors, and its value shall be set down opposite to the description; such value shall be the same as was affixed to the lot in the last assessment-roll of the town; and if such lot was not separately valued in such roll, then in proportion to the valuation which shall have

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been affixed to the whole tract, of which such lot shall be a part.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, § 22, as amended by L. 1835, ch. 154, § 2.

See notes under § 33, *post*.

Highway taxes on the lands of non-residents are not required either to be assessed or to be put on the rolls or to be valued or verified by the board of assessors. (*Colman v. Shattuck*, 2 Hun, 497.) Nor to be covered by the warrant of the supervisors. (*Id.*)

See *Ensign v. Barse*, 107 N. Y. 329; *Fowler v. Westervelt*, 17 Abb. Pr. 59.

§ 33. Assessments of highway labor, how made.—The commissioners of highways shall, at their first or some subsequent meeting, ascertain, assess and apportion the highway labor to be performed in their town, in the then ensuing year, as follows:

1. The whole number of days work to be assessed in each year, shall be ascertained, and shall be at least three times the number of taxable inhabitants in the town.

2. Every male inhabitant being above the age of twenty-one years (excepting all honorably discharged soldiers and sailors who lost an arm or a leg in the service of the United States, during the late war, or who are unable to perform manual labor by reason of injuries received, or disabilities incurred in such service, members of any fire company formed or created pursuant to any statute and situated within such town, persons seventy years of age, clergymen and priests of every denomination, paupers, idiots and lunatics), shall be assessed at least one day.

3. The residue of such days work, shall be apportioned and assessed upon the estate, real and personal, of every inhabitant of the town, including corporations liable to taxation therein, as the same shall appear by the last assessment-roll of the town, and upon each tract or parcel of land owned by non-residents of the town contained in

Assessments of highway labor, how made.

the list made by the commissioners, excepting such as are occupied by an inhabitant of the town, which shall be assessed to the occupant. The assessment of labor for personal property, must be in the district in which the owner resides, and real property in the district where it is situated, except that the assessment of labor upon the property of corporations, may be in any district or districts of the town, and such labor may be worked out or commuted for, as if the corporation were an inhabitant of the district, but the real property within an incorporated village or city, exempted from the jurisdiction of the commissioners of highways of the town, and personal property of an inhabitant thereof, shall not be assessed for highway labor by the commissioners of highways of the town. Whenever the assessors of any town shall have omitted to assess any inhabitant, corporation or property therein, the commissioners of highways shall assess the same, and apportion the highway labor as above provided.

4. The commissioners shall affix to the name of each person named in the lists furnished by the overseers, and of assessable corporations, and to the description of each tract or parcel of land contained in the list prepared by them of non-resident lands, the number of days which such person or tract shall be assessed for highway labor, as herein directed, and the commissioners shall subscribe such lists, and file them with the town clerk.

5. If the commissioners of highways shall neglect for one year, after any highway shall have been laid out, and title thereto acquired, to open or work the same, or any part thereof, and any inhabitant or corporation of the town, in or through which the highway runs, shall give ten days' notice to the commissioners of the town, that they desire to apply the whole or any part of their highway labor to the working of such highway, the commissioners shall assign such inhabitants and corporations to

Assessments of highway labor, how made.

such highway district, direct the highway labor for which they are annually assessed to be applied to the same, and cause the same to be worked and put in good order for vehicles and travelers within one year, under the direction of any of such inhabitants, whom such commissioners may appoint as an overseer of the labor so to be applied to such highway; and when the number of days labor assessed in the current year to such inhabitants, as the annual highway tax, is not sufficient to put such highway in good order, the inhabitants and corporations may anticipate the whole or any part of the highway labor assessed, and to be assessed against them, for a period not exceeding three years, but from no one of the districts of the town shall more than one-half of its annual labor be taxed and applied to any highway not embraced in such district.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, §§ 19, 22, 24, 32, as variously amended. Amended by L. 1898, ch. 353.

See § 62, *post*, as to the rate per day for labor commuted; L. 1871, ch. 171, Appendix, *post*, as to the assessment of persons owning property partly within city or village; L. 1862, ch. 220, Appendix, *post*, as to exemption of officers of State Asylum for Idiots; Transportation Corporations Law, § 150, Appendix, *post*, as to highway labor on line of turnpike road; Indian Law, § 94, Appendix, *post*, as to labor on Indian lands; County Law, § 93, as to employment of prisoners in county jail upon the highways; L. 1894, ch. 266, Appendix, *post*, as to the employment of state prison convicts upon highways; L. 1898, ch. 133, Appendix, *post*, as to employment of convicts upon highways in Clinton county.

Where an application is made to commissioners of highways by citizens under the act of 1853, to be allowed to work out their apportionment of highway labor upon a plank road, the power to grant the application is discretionary with the commissioners, and they cannot be compelled to grant it. (*Buffalo Plank Road Co. v. Commissioners of Highways*, 10 How. Pr. 237.)

A tenant living upon the line of a plank road may make such application. (*People v. Hall*, 15 How. Pr. 76.)

The state cannot tax Indian reservation lands for highway purposes.

Copies of lists delivered to overseers.

(*Fellows v. Denniston*, 72 U. S. 761; s. c., 23 N. Y. 420; Indian Law, § 6.)

The validity of an assessment for highway labor is not dependent upon the validity of the last assessment-roll of the towns, for the highway commissioners have no discretion in making their assessment for highway labor to omit any real or personal estate appearing upon the assessment roll. So though the assessment by the assessors may have been void yet the assessment by the commissioners will stand. (*Trustees v. Morse*, 56 Barb. 380.)

Lands of nonresidents may be assessed for highway tax though they be wild and unimproved and not occupied or improved by the owner or his agent or servant. (*Chamberlain v. Taylor*, 36 Hun, 24; *Ensign v. Barse*, 107 N. Y. 329.)

Where the commissioner in levying his tax follows the assessment-roll as herein provided, he is not liable to a plaintiff for the value of labor rendered by him in satisfaction of an assessment, although an error had been made by the assessors. (*Hampton v. Hamsher*, 124 N. Y. 634.)

In respect to all his land in the town, each inhabitant is to be assessed for highway labor in the particular road district in which he resides. (*Rinehart v. Young*, 2 Lans. 354.)

It was formerly held that the commissioners could tax only those corporations which were assessed on the last assessment-roll of the town. (*People, &c. v. Pierce*, 31 Barb. 138.)

Corporations not liable to assessment. (*Bank of Ithaca v. King*, 12 Wend. 390.)

Corporations may be taxed in other districts than that which contains their property. (*Railway Co. v. Supervisors*, 67 How. Pr. 5.)

Premises must be described with accuracy and precision. (*Bayard v. Healy*, 20 Johns. 495.)

It is not necessary that the number of the road district or date of the commissioner's warrant be upon the roll assessing the highway tax. (*Chamberlain v. Taylor*, 36 Hun, 24; *Ensign v. Barse*, 107 N. Y. 329.)

See *Fowler v. Westervelt*, 17 Abb. Pr. 59.

§ 34. Copies of lists delivered to overseers.—The commissioners of highways shall direct the clerk of the town to make copies of such lists, and shall subscribe such copies, after which they shall cause the several copies to

Names omitted.

be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed, and the acceptance of the list by any overseer to whom the same may be delivered, shall be deemed conclusive evidence of his acceptance of the office of overseer.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, § 25, as amended by L. 1863, ch. 444.

See *Colman v. Shattuck*, 2 Hun, 497.

§ 35. **Names omitted.**—The names of persons or corporations omitted from any such list, and of new inhabitants, shall from time to time be added to the several lists, and they shall be assessed by the overseers in proportion to their real and personal estate to work on the highways as others assessed by the commissioners on such lists, subject to an appeal to the commissioners of highways.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, § 26.

“New inhabitants” whose names “shall from time to time be added to the several lists” are new inhabitants not of the road district but of the town. (*Rinehart v. Young*, 2 Lans. 354.)

It was formally held that the assessors could tax only those corporations which were assessed on the last assessment-roll of the town. (*People v. Pierce*, 31 Barb. 138.)

One who owns land in the same town with his residence, but in a different road district, upon moving his residence to the land without having been assessed in respect thereof for highway labor, may be added to the list as a name omitted. (*Rinehart v. Young*, 2 Lans. 354.)

See *Trustees v. Morse*, 56 Barb. 380.

§ 36. **Appeals by non-residents.**—Whenever any non-resident owner of unoccupied lands shall conceive himself aggrieved by any assessment of any commissioner of highways, such owner, or his agent, may, within thirty days after such assessment, appeal to the county judge of the county in which such land is situated, who shall,

Credit on private roads.

within twenty days thereafter, hear and decide such appeal, the owner or agent giving notice to the commissioners of highways of the time of the hearing before the judge, and his decision thereupon shall be final and conclusive.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, §§ 27, 28.

§ 37. ***Credit on private roads.***—The commissioners of highways of each town shall credit to such persons as live on private roads and work the same, so much on account of their assessments as the commissioners may deem necessary to work such private road, or shall annex the private roads to some of the highway districts.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, § 29.

§ 38. ***Certain assessments to be separate.***—Whenever the commissioners of highways shall assess the occupant, for any land not owned by such occupant, they shall distinguish in their assessment lists, the amount charged upon such land, from the personal tax, if any, of the occupant thereof; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year to work on the highways, on account of the same land.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, § 30.

§ 39. ***Tenant to deduct assessment.***—Whenever any tenant of any land for a less term than twenty-five years, shall be assessed to work on the highways for such land, and shall actually perform such work, or commute therefor, he shall be entitled to a deduction from the rent due, or to become due from him for such land, equal to the full amount of such assessment, estimating the same at the

Reassessment in case of neglect.

rate of one dollar per day, unless otherwise provided for by agreement between the tenant and his landlord.

Revised from 1 R. S., ch. 16, tit. 1, art. 2, § 31.

§ 40. *Reassessment in case of neglect.*—If it shall appear from the annual return of any overseer of highways, that any person or corporation who was assessed to work on the highways (other than non-residents), has neglected to work the whole number of days assessed, and has not commuted for, or otherwise satisfied such deficiency, the commissioners of highways shall reassess the deficiency to the person so delinquent, at the next assessment for work for highway purposes, and add it to his annual assessment; such reassessment shall not exonerate any overseer of highways from any penalty which he may have incurred under the provisions of this chapter.

Revised from L. 1832, ch. 107, §§ 2, 3.

§ 41. *Omissions of assessors corrected.*—Whenever the assessors of any town shall have omitted to assess any inhabitant or property in their town, the commissioners of highways shall assess the persons and property so omitted, and shall apportion highway labor upon such persons or property, in the same manner as if they had been duly assessed upon the last assessment-roll.

Revised from L. 1837, ch. 431, § 6.

See note to *Hampton v. Hamsher*, 124 N. Y. 634, under § 33, ante.

§ 42. *New assessments by overseers.*—When the quantity of labor assessed on the inhabitants of any district by the commissioners of highways, shall be deemed insufficient by the overseer of the district to keep the highways therein in repair, such overseer shall make another assessment on the actual residents of the district, in the same proportion, as near as may be, and not exceeding one-

Sidewalks and trees.

third of the number of days assessed in the same year by the commissioners, on the inhabitants of the district; and the labor so assessed by an overseer, shall be performed or commuted for in like manner, as if the same had been assessed by commissioners of highways.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 8.

Liability of town or village for failure to keep road in repair, it being possible to have suitably assessed labor for such repairs under this section. (*Farman v. Town of Ellington*, 46 Hun, 41; *Weed v. Village of Ballston Spa.*, 76 N. Y. 329; *People ex rel. Everett v. Supervisors*, 93 N. Y. 397.)

§ 43. Sidewalks and trees.—The commissioners of highways may, by an order in writing duly certified by a majority of them, authorize the owners of property adjoining the highways, at their own expense, to locate and plant trees, and locate and construct sidewalks along the highways in conformity with the topography thereof, which order, with a map or diagram showing the location of the sidewalk and tree planting, certified by the commissioners, shall be filed in the office of the clerk of the town where the highway is located, within ten days after the making of the order.

*(*R. S.*, p. 1400, *post*, p. 917.)

Revised from L. 1881, ch. 233.

See § 156, *post*; L. 1881, ch. 344, Appendix, *post*, providing a penalty for the mutilation of shade trees.

On the side of the road the land owner has substantial rights of property both in the surface and in the soil. In addition to the ordinary easements of light, air and access, he may, on a country highway, plant shade trees, cultivate the sides of the road and do anything to improve or beautify it or his own property so long as his acts do not impair the public right of passage. The state not only invites him to plant trees, but it encourages him to do so by granting to those who do this a substantial reduction in their road tax. (*Palmer v. Larchmont Electric Co.*, 6 App Div. 12; *Jackson v. Hathaway*, 15 Johns. 447; Highway Law, § 44.)

*So in the original.

Abatement of tax for shade trees.

The setting out of trees along the side of a highway has from time immemorial been recognized as a proper use of a highway. (*Edsall v. Howell*, 86 Hun, 424.)

Under L. 1863, ch. 93, repealed hereby, owners of lands fronting on highways were given power to set out trees and make sidewalks without an order of the highway commissioners. By the saving clause of this act, § 181, no act done or right acquired before it took effect, shall be affected. (*Edsall v. Howell*, 86 Hun, 424.)

Sidewalks are, as has repeatedly been held, a part of the highway. The owner of adjoining territory has no greater duty in regard to keeping sidewalks in repair than he has in regard to other parts of the highway, unless such duty has been imposed upon him by some statute or contract. Therefore he is not liable for injuries resulting from a defective sidewalk. (*Village of Fulton v. Tucker*, 3 Hun, 529; see, also, *Clapper v. Town of Waterford*, 131 N. Y. 382.)

The setting out of trees or the building of a sidewalk in a highway by the owner of adjoining lands, is not an adverse possession as against the true owner of the fee in the highway. (*Bliss v. Johnson*, 94 N. Y. 235.)

§ 44. *Abatement of tax for shade trees.*—Any inhabitant liable to highway tax, who shall hereafter, pursuant to such an order, transplant by the side of the highway adjoining his premises, any forest shade trees, fruit trees, or any nut bearing trees, suitable for shade trees, shall be allowed by the overseers of the highways, or other officer having charge of the highway, in abatement of his highway tax, one dollar for each four trees set out; but all trees must have been set out the year previous to such allowance, and be living and well protected from animals at the time of the allowance, and not further than eight feet from the outside line of any highway three rods wide, and not more than one additional foot further therefrom, for each additional rod in width of highway, and not less than seventy feet apart, on the same side of the highway, if elms, or fifty feet, if other trees; trees transplanted by the side of the highway, in place of trees which have died, shall be allowed for in the same manner. Such

Sidewalk tax anticipated.

abatement of highway tax to any person, shall not exceed one-quarter of his annual highway tax in any one year; but such abatement shall be allowed by the overseers of highways, or other officers having charge of the highway, annually, until it shall have equalled the whole number of trees set out, at the rate herein specified.

Revised from L. 1883, ch. 371.

See notes under § 43, *ante*.

§ 45. *Sidewalk tax anticipated.*—The commissioners of highways of any town, may, upon the written application of a majority of the inhabitants in any highway district, subject to assessment for highway labor therein, authorize not more than one-quarter of the highway labor of the district, or of the commutation money received therefor, to be expended under the direction of the overseer of highways of the district, in the construction, repairs and improvement of any sidewalks within the limits of the district, and may by writing signed by them, filed with the town clerk, authorize not more than one-fourth of the highway labor of the district, to be anticipated for not more than three years, for constructing, improving or repairing any such sidewalk; and thereupon any person or corporation, assessed for highway labor in the district, may, for such purpose, anticipate his or its assessment for highway labor for the term prescribed by the commissioners, and may perform such labor, under the direction of the overseer, within such time, or commute therefor.

Revised from L. 1880, ch. 305, § 1, as amended by L. 1884, ch. 479.

§ 46. *Certificate of anticipation.*—The overseer shall give to such person or corporation, upon the performance of such labor or commutation therefor, a certificate signed by him, showing the number of days labor so anticipated and worked, or commuted for by such person or corpora-

Transfer of certificate.

tion; and in each succeeding year, upon presentation of such certificate, the person or corporation shall be credited and allowed by the overseer of highways, with the performance of the number of days labor assessed for such year, until the credit shall equal the number of days stated in the certificate to have been anticipated, and shall endorse thereon a statement signed by him, showing the credit and allowance.

Revised from L. 1880, ch. 305, § 2.

§ 47. *Transfer of certificate.*—Such certificate may be transferred to any grantee, upon a voluntary grant of the real property upon which such highway labor is assessable, and if such real property is transferred otherwise than by voluntary grant, it shall be deemed to have been transferred to the person succeeding thereto, and in the hands of any such transferee, it shall have the same effect as when held by the original owner.

Revised from L. 1880, ch. 305, § 3.

§ 48. *Abatement of tax for watering trough.*—The commissioners of highways shall annually abate three dollars from the highway tax of any inhabitant of a highway district, who shall construct on his own land therein, and keep in repair a watering trough beside the public highway, well supplied with fresh water, the surface of which shall be two or more feet above the level of the ground, and easily accessible for horses with vehicles; but the number of such watering troughs in the district, and their location, shall be designated by the commissioners. In a town in which the highways are worked or repaired by the money system of taxation, the commissioners of highways shall annually issue to each person to whom

System of taxation defined.

such an abatement is allowed, a certificate specifying the amount thereof.

Revised from L. 1869, ch. 131, § 1, as amended by L. 1872, ch. 274, § 1. Amended by L. 1897, ch. 227, § 1.

See L. 1869, ch. 131, Appendix, *post*, as to abatement of plank road tolls for establishing watering troughs.

§ 49. *System of taxation defined.*—The system of taxation for working and repairing highways, as herein-before provided, shall be known as “The Labor System of Taxation,” and the system hereinafter provided, shall be known as “The Money System of Taxation.”

New.

§ 50. *Town may change its system.*—Any town may change its system of taxation for working and repairing its highways, by complying with the following provisions relating thereto.

Revised from L. 1873, ch. 395, § 1.

§ 51. *Vote thereon.*—Upon the written request of twenty-five [taxpayers of any town, the electors thereof may, at an annual town meeting vote by ballot upon the question of changing the system of taxation for working the highway; but no person residing in an incorporated village or [city, exempted from the jurisdiction of commissioners of highways of the town, shall sign such request, or vote upon such question.

Revised from L. 1873, ch. 395, § 2. Amended by L. 1895, ch. 386.

§ 52. *When change to take effect.*—When a town shall have voted to change the system of working and repairing the highways, as herein provided, such change shall not take effect until the next annual meeting of the board of

Annual tax under money system; certain villages exempt therefrom.

supervisors, after the town meeting at which it was decided to make the change; and until such annual meeting of the board of supervisors the former system of repairing highways shall remain in force in such town. In each town of Westchester county such change shall be for a term not less than five years.

*Revised from L. 1873, ch. 395, § 10, as amended by L. 1888, ch. 240.
Amended by L. 1895, ch. 386.*

§ 53. Annual tax under money system; certain villages exempt therefrom.—Any town voting in favor of the money system, shall annually raise by tax, to be levied and collected the same as other town taxes, for the repair of the highways, an annual sum of money, which shall be equal to at least one-half the value at the commutation rates, of the highway labor which should be assessable under the labor system; but in any town in which there may be an incorporated village, which forms a separate road district, and wherein the roads and streets are maintained at the expense of such village, all property within such village shall be exempt from the levy and collection of such tax for the repair of highways of such town; and the assessors of such town are hereby required to indicate on the assessment roll the property included in such incorporated village, in a column separate from that containing a list of the property in the town not included in such village; and shall also place on the assessment roll the names of all persons liable to poll tax who are not residents of such village, and the board of supervisors are directed to levy a tax of one dollar on each person liable to poll tax as thus indicated; but this act shall not apply to assessments made for damages and charges for laying out or altering any road, or for erecting or repairing any bridge in such town. The amount of such tax shall be

Adoption of county road system.

determined by the commissioners of highways and the town board, who shall certify the same to the board of supervisors, the same as any other town charge. The clerk of the board of supervisors of each county containing a town which has voted for the money system shall, on or before the first day of January of each year transmit to the state comptroller a statement certified by him, and signed and verified by the chairman of such board, stating the name of each town so voting, and the amount of money tax levied therein for the repair of highways during the preceding year. The comptroller shall draw his warrant upon the state treasurer in favor of the treasurer of the county in which such town is situated, for an amount equal to twenty-five per centum of the amount so levied in each town. The county treasurer shall pay out the amount so paid to him on account of the money tax levied in any such town upon the order of the highway commissioner thereof, to be used by him, for the repair and permanent improvement of such highways therein, and in such manner as the commissioner of highways and town board may determine. The sum paid by the state to any town by virtue of this section shall not exceed, in any one year, one-tenth of one per centum of the taxable property of such town.

Revised from L. 1873, ch. 395, §§ 3, 4, as amended by L. 1874, ch. 169, by and L. 1889, ch. 259. Amended by L. 1893, ch. 412, and by L. 1898, ch. 351.

See L. 1871, ch. 171, Appendix, *post*, providing for the assessment on real estate lying partly within village limits.

See L. 1895, ch. 717, Appendix, *post*, providing that all highway commissioners of towns using the money system of taxation shall file their contracts with the town clerk.

§ 54. (*Adoption of county road system.*)—The board of supervisors of any county may, by a vote of a majority of the members thereof, by resolution, adopt the county road

County engineer.

system, and shall as soon as practicable after the adoption of such resolution, cause to be designated as county roads, such portions of the public highways in such county as they shall deem advisable, outside of the limits of any city in such county, and shall cause such designation and a map of such county roads to be filed in the clerk's office of such county; the roads so designated shall, so far as practicable, be leading market roads in such county.

Added by L. 1893, ch. 333. Amended by L. 1895, ch. 375.

See County Law, § 61, Appendix, *post*, as to the laying out of county roads by the board of supervisors.

§ 55. (*County engineer.*)—There shall be a county engineer in every such county, who shall be appointed by the board of supervisors thereof, and be removable at its pleasure. The term of office of each county engineer shall be three years, unless sooner removed, and his salary shall be fixed by the board of supervisors and be a county charge.

Added by L. 1893, ch. 333.

§ 56. (*Expenses, how paid.*)—The expenses of improving, repairing and maintaining the county roads of each county, shall be a county charge, and in any county in which during the past five years there has been expended at least the sum of five hundred thousand dollars for macadamizing purposes, the expense of constructing, improving, maintaining and repairing such county roads, shall be annually apportioned by the board of supervisors of the county, upon the various towns and cities within the county, as the said board may deem just. The money necessary to improve, repair and maintain the county roads or to pay the principal and interest of any bonds

Issue of bonds, etc.

issued as provided in the next section, shall be levied and collected at the same time and in the same manner as money for other county charges is levied and collected. The board of supervisors shall designate the amount of money to be expended upon each county road, and may make rules and regulations for the government of the county engineer and regulating the expenditure of such money.

Added by L. 1893, ch. 333. Amended by L. 1895, ch. 375.

§ 57. (*Issue of bonds, etc.*)—The board of supervisors of such county may borrow money from time to time for the construction, maintenance and repair of the county roads in such county, and may issue the bonds or other evidences of indebtedness of the county therefor; but such bonds or other evidences of indebtedness shall not bear a rate of interest exceeding five per centum per annum, and shall not be for a longer term than twenty years, and shall not be sold for less than par.

Added by L. 1893, ch. 333.

§ 58. (*County roads under charge of supervisors and county engineer.*)—The county roads in any county shall be exclusively under the jurisdiction of the board of supervisors and the county engineer of the county, and exempt from the jurisdiction of the highway officers or officers performing the duty of highway commissioners of the several towns and villages in which such county roads are located. The system of taxation for working and repairing the highways other than the county roads in a town in a county in which the county road system is adopted, shall be the money system of taxation, provided, however, that in the county of Queens, the system as now provided by special act shall be continued.

Added by L. 1893, ch. 333. Amended by L. 1895, ch. 375.

Proceeds of county bonds.

§ 59a. (*Proceeds of county bonds.*)—If the proceeds of any county bonds issued for the construction of certain specified highways shall exceed the amount necessary for the construction of said highways, the board of supervisors may, in their discretion, apply such excess or any part thereof to the construction and improvement of other roads already adopted into the county road system; or to the maintenance of the roads for the construction of which said bonds were issued; or to the payment of interest or principal, or both, of said bonds.

Added by L. 1898, ch. 641.

Duties of overseers.

ARTICLE III.

THE DUTIES OF OVERSEERS OF HIGHWAYS, AND THE PERFORMANCE OF HIGHWAY LABOR.

SECTION 60. Notice to work.

61. Notice to non-residents.
62. Commutation.
63. Teams and implements.]
64. Substitutes.
65. Penalties for neglect to work or commute.
66. Assessment for unperformed labor.
67. Penalty for refusal of overseer to provide list.
68. Collection of arrearages for unperformed labor.
69. Annual return of overseers.
70. Noxious weeds in highway.
71. Overseers to notify occupant to remove weeds.
72. Abatement of tax for removal of fence.
73. Abatement of tax for street lamps.
74. Rebate of tax for using wagon tires of certain width.

SECTION 60. *Notice to work.*—Every overseer of highways shall give at least twenty-four hours' notice to all residents of his district, and corporations assessed to work upon the highways therein, of the time and place at which they are to appear for that purpose, and with what teams and implements, and that they will be allowed at the rate of one day for every eight hours of work on the highways, between seven o'clock in the forenoon and six o'clock in the afternoon. The notice to corporations shall be served personally on an agent thereof residing in the town, if any, or if none, by filing the notice in the office of the town clerk, at least five days before the labor shall be required; and any number of days not exceeding fifty,

Notice to non-residents.

may be required to be performed by any such corporation in any one day.

Revised from L. 1837, ch. 431, § 2, and from 1 R. S., ch. 16, tit. 1, art. 3, § 32, as amended by L. 1876, ch. 348.

See *Rinehart v. Young*, 2 Lans. 354.

§ 61. *Notice to non-residents.*—Every overseer of highways shall give at least five days' notice to every resident agent of every non-resident land-holder, whose lands are assessed, of the number of days such non-resident is assessed, and the time and place at which the labor is to be performed. If the overseer cannot ascertain that such non-resident has an agent within the town, he shall file a written notice in the office of the town clerk, at least twenty days before the time appointed for performing such labor, containing the names of such non-residents, when known, and a description of the lands assessed, with the number of days' labor assessed on each tract, and the time and place at which the labor is to be performed.

Revised from 1 R. S., ch. 16, tit. 1, art. 3, §§ 33, 34.

See § 4, sub. 6, *ante*, as to the commissioners requiring such notice to be given; § 34, *ante*, as to delivery of taxable list to overseers.

§ 62. *Commutation.*—Every person and corporation shall work the whole number of days for which he or it shall have been assessed, except such days as shall be commuted for, at the rate of one dollar per day, and such commutation money shall be paid to the overseers of highways of the district in which the labor shall be assessed, within at least twenty-four hours before the time when the person or corporation is required to appear and work on the highways; but any corporation must pay its commutation money to the commissioners of highways of the town, who shall pay the same to the overseers of the districts respectively, in which the labor commuted for was

Teams and implements.

assessed, except in the counties of Chemung, Onondaga, Columbia, Wayne, Erie, Franklin, Sullivan, Tioga, Saratoga, Broome and Orange, where such commutation money shall be paid on or before the first day of June of each year, to the commissioner or commissioners of highways of the town in which the labor shall be assessed, and such commutation money shall be expended by the commissioner or commissioners of highways upon the roads and bridges of the town as may be directed by the town board.

Revised from L. 1837, ch. 431, § 3; from L. 1877, ch. 344, § 1, as amended by L. 1878, ch. 44; from 1 R. S., ch. 16, tit. 1, art. 3, § 35, 36, as variously amended; from L. 1866, ch. 770, § 1. Amended by L. 1895, ch. 579, by L. 1896, ch. 973, and by L. 1897, ch. 334.

See § 33, sub. 3, *ante*, as to commutation by corporation.

Under laws of 1873, ch. 431, an overseer of highways had a right to apply and expend all commutation moneys received from individuals residing in his district on the roads and bridges in that district; but he had no right without authority from the commissioners, to expend any part of the commutation money received from moneyed or stock corporations; for the commissioners were given control over such moneys, and might expend them in any district in the town.

The money might be paid in the first instance to one of the commissioners; if it were paid to an overseer, he received for them and it was his duty to pay it over to them. Failing to perform this duty, they were entitled to demand it.

Something similar now seems to be the law in certain counties, as seen by the above section. (*Fowler v. Westervelt*, 40 Barb. 374.)

See *People ex rel. Scott v. Supervisors*, 8 N. Y. 325.

§ 63. Teams and implements.—Every overseer of highways may require a team, or a cart, wagon or plow, with a pair of horses or oxen, and a man to manage them, from any person having the same within his district, who shall have been assessed three days or more, and who shall not have commuted for his assessment; and the per-

Substitutes.

son furnishing the same upon such requisition, shall be entitled to a credit of three days for each day's service therewith.

Revised from 1 R. S., ch. 16, tit. 1, art. 3, § 37.

§ 64. Substitutes.—Every person or corporation assessed to work on the highways, and warned, who does does* not commute therefor, may appear in person or by an able bodied man as a substitute. A day's labor shall be eight hours of work, and every person or corporation assessed more than one day shall be allowed to work ten hours in each day.

Revised from 1 R. S., ch. 16, tit. 1, art. 3, § 38 as amended by L. 1880, ch. 308, § 3.

§ 65. Penalties for neglect to work or commute.—Every person or corporation assesed highway labor, who shall not commute, and who shall not appear and work when duly notified, shall be liable to a penalty of one dollar and fifty cents for every day he shall so fail to appear and work; and for wholly omitting to comply with any requisition to furnish a team, cart, wagon, implements and man, he shall be liable to a penalty of five dollars for each day's omission, and for omitting to furnish either a cart, wagon, plow, team or man to manage the team, he shall be liable to a penalty of one dollar and fifty cents for each day's omission; and if any person shall after appearing, remain idle, or not work faithfully, or hinder others from working, he shall be liable to a penalty at the rate of one dollar and fifty cents a day for each hour. The penalties herein imposed, may be recovered by action by the overseer of highways as such, and, when collected, shall be expended or disposed of by the overseer in the same manner as commutation

*So in the original.

Assessment for unperformed labor.

moneys. The penalties, when recovered, shall be applied in satisfaction of the labor assessed, for omission to perform which, the penalties were respectively imposed. The overseer of highways may excuse any omission to perform labor when required, if a satisfactory reason shall be given therefor; but the acceptance of any such excuse shall not exempt the person excused from commuting for, or working the whole number of days for which he shall have been assessed during the year.

Revised from L. 1837, ch. 431, §§ 4, 5 and from 1 R. S., ch. 16, tit. 1, art. 3, §§ 39-46, as amended by L. 1880, ch. 308.

A private suit will not lie against an overseer of highways, for adjudging a party in default, and making his complaint. (*Freeman v. Cornwall*, 10 Johns. 470.)

See *Potter v. Benniss*, 1 Johns, 515, as to the proper action at common law to recover back money collected by an overseer from one in default.

See *Rinehart v. Young*, 2 Lans. 354; *Bouton v. Neilson*, 3 Johns. 474; *Walker v. Moseley*, 5 Den. 102; *Thayer v. Lewis*, 4 Den. 269.

§ 66. Assessment for unperformed labor.—Every overseer of highways shall between the fifteenth day of September and the first day of October of each year, make out and deliver to the commissioner of highways of his town, a list of all persons and corporations who have not worked out, or commuted for their highway assessment, with the number of days not worked or commuted for by each, charging for each day in such a list, at the rate of one dollar and fifty cents a day; and also a list of all the lands of non-residents and persons unknown, which were assessed on his warrant by the commissioner of highways, or added by him, on which the labor assessed has not been performed or commuted for, and the number of days' labor unpaid by each, charging for the same at the rate of one dollar and fifty cents per day, which list shall be accompanied by the affidavit of the overseer, that he has given the notice required, to appear and work, and that

Penalty for refusal of overseer to provide list.

the labor specified in the list returned, has not been performed or commuted, and it shall be the duty of the commissioner of highways to collect and present such lists to the town board of his town at the meeting held on the Thursday next preceding the annual meeting of the board of supervisors. The town board shall certify the amount of unpaid taxes so returned to them by the commissioner of highways to the board of supervisors.

*Revised from 1 R. S., ch. 16, tit. 1, art. 3, §§ 47, 49, as variously amended.
Amended by L. 1898, ch. 350.*

See *Colman v. Shattuck*, 2 Hun, 500.

§ 67. *Penalty for refusal of overseer to provide list.*—If any overseer shall refuse or neglect to deliver such list to the commissioner of highways, or to make the affidavits herein directed, he shall for every such offense, forfeit the sum of ten dollars and the amount of taxes for labor remaining unpaid, at the rate of one dollar for each day assessed. The commissioner of highways shall, in case of such refusal or neglect, recover such penalty and apply the amount recovered in making and improving the highways and bridges of the delinquent overseers' district.

Revised from 1 R. S., ch. 16, tit. 1, art. 3, § 48. Amended by L. 1898, ch. 350.

§ 68. *Collection of arrearages for unperformed labor.*—Each board of supervisors, at its annual meeting in each year, shall cause the amount of such arrearages for highway labor returned to them, estimating each day's labor at one dollar and fifty cents a day, to be levied and collected from the real or personal estate of the person, corporation, or from the non-resident real estate, specified in such list, to be collected by the collectors of the several towns, in the same manner that other town taxes are collected, and shall order the same, when collected, to be paid over to the commissioners of highways of the town

Annual return of overseers.

wherein the same is collected, to be by them applied toward the construction, repairs and improvement of the highways and bridges in the district in which the labor was originally assessed.

Revised from 1 R. S., ch. 16, tit. 1, art. 3, § 50, as variously amended.

See *Colman v. Shattuck*, 2 Hun, 500.

§ 69. *Annual return of overseers.*—Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected or appointed, render to one of the commissioners of highways of the town, an account in writing, verified by his oath, and containing,

1. The names of all persons assessed to work on the highways in the district of which he is overseer.
2. The names of all those who have actually worked on the highways, with the number of days they have so worked.
3. The names of all those from whom penalties have been collected, and the amounts thereof.
4. The names of all those who have commuted, and the manner in which the moneys arising from penalties and commutations have been expended by him.
5. A list of all persons whose names he has returned to the supervisor as having neglected or refused to work out their highway assessments, with the number of days and the amount of tax so returned for each person, and a list of all the lands which he has returned to the supervisor for non-payment of taxes, and the amount of tax on each tract of land so returned; and he shall then and there pay to the commissioners of highways, all money remaining in his hands unexpended, to be applied by them in making and improving the highways and bridges of the town, in such manner as they shall direct; and if he shall neglect

Noxious weeds in highway.

or refuse to render such account, or if, having rendered the same, he shall refuse or neglect to pay any balance which then may be due from him, he shall for every such offense, forfeit the sum of ten dollars.

Revised from 1 R. S., ch. 16, tit. 1, art. 3, §§ 51, 53, as amended by L. 1865, ch. 522. §§ 4, 5.

§ 70. *Noxious weeds in highway.*—Every person or corporation, owning or occupying, under a lease for one or more years, any cultivated or inclosed lands, abutting upon any highway, shall cause all noxious weeds, briars, and brush growing upon such lands within the bounds of the highway, to be cut or destroyed between the fifteenth day of June and the first day of July, and between the fifteenth day of August and the first day of September, in each and every year; but boards of supervisors may fix a different period or periods, for such cutting or destruction in their respective counties. No person shall place or cause to be placed, any noxious weeds, or the seeds of such weeds, within the bounds of any public highway. Any willful violation of this section, shall subject the person or corporation so offending to a penalty of ten dollars for each offense.

Revised from L. 1878, ch. 49, §§ 1, 3.

See notes under § 20, ante.

§ 71. *Overseers to notify occupants to remove weeds.*—The overseers of every highway district shall give written notice to any occupant of the premises to cut all weeds, briars and brush growing within the bounds of the highway; if such occupant shall not cut such weeds, briars and brush as so required within ten days after receiving such notice, such overseer shall employ some one to do such work, and and* make a report under oath to

*So in the original.

Abatement of tax for removal of fence.

the commissioners of highways, of the amount expended by him thereon, and the ownership and occupancy of the several parcels of land against which the labor was performed, on or before the first day of November in each year; the commissioners of highways shall certify these statements to the supervisor of the town, and the supervisor shall lay the same before the board of supervisors at its next annual meeting, and such board shall include the amounts included in such statements in the taxes assessed upon the lands, upon or against which the labor was performed, the same to be collected with the other taxes, and paid over upon the order of the supervisor to the parties entitled thereto.

Revised from L. 1878, ch. 49, § 5, as amended by L. 1886, ch. 291, and by L. 1887, ch. 604.

See notes under § 20, *ante*.

§ 72. *Abatement of tax for removal of fence.*—Any inhabitant liable to a highway tax, who shall remove from lands owned or occupied by him, the fence along any public highway, for the purpose of preventing the drifting of snow into such highway, shall be allowed by the overseer of highways, in abatement of his highway tax, the time actually expended in removing such fence, and in replacing the same, pursuant to the directions of the overseer of highways.

Revised from L. 1875, ch. 196, § 1.

See notes under § 21, *ante*.

§ 73. *Abatement of tax for street lamps.*—Any person or corporation owning or holding real estate, or other property liable to highway tax, except in the county of Kings, other than in cities and incorporated villages, who shall, with the consent of the overseer of highways in charge of the district in which such property is assessed,

Rebate of tax for using wagon tires of certain width.

and in such places as he may direct, erect a street lamp, and cause the same to be properly attended to and kept burning during such hours of each night as the overseer of highways may direct, shall be allowed by the overseer of highways, in abatement of such highway tax, six dollars annually, or such portion of six dollars as the annual highway taxes upon such real estate or other property may be.

Revised from L. 1884, ch. 251, § 1.

§ 74. *Rebate of tax for using wagon tires of certain width.*—Every person who, during the year ending June first, eighteen hundred and ninety-three and each succeeding year thereafter, uses on the public highways of this state only wagons or vehicles with wheels upon which two or more horses are used the tire of which shall be not less than three inches in width, shall receive a rebate of one-half of his assessed highway tax for each such year, not exceeding however in any one year the sum of four dollars for four day's labor. The right to such rebate shall not be affected by the use upon the public highways of buggies, carriages or platform spring wagons carrying a weight not exceeding one thousand pounds. Upon making an affidavit showing that he has complied with the provisions of this section during any such year, he shall be credited by the overseer of highways of the road district in which he resides or any road district where he is assessed with such rebate. Such affidavit may be taken before any overseer of highways who is hereby authorized to administer such oath.

Added by L. 1893, ch. 468.

Laying out, etc., highways and private roads.

ARTICLE IV.

LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS, AND LAYING OUT PRIVATE ROADS.

- SECTION 80. Highways by dedication.
81. Survey.
82. Application.
83. Application for commissioners.
84. Appointment of commissioners, and their duties.
85. Notice of meeting.
86. Decision of commissioners in favor of application.
87. Damages in certain cases, how estimated.
88. Decision of commissioners denying application.
89. Motion to confirm, vacate or modify.
90. Limitation upon laying out highways.
91. Laying out highways through burying grounds.
92. Costs, by whom paid.
93. Damages assessed, and costs to be audited.
94. When officers of different towns disagree about highway.
95. Difference about improvements.
96. Highways in two or more towns.
97. Laying out, dividing and maintaining highway upon town
line.
98. Final determination, how carried out.
99. Highways abandoned.
100. Highways by use.
101. Fences to be removed.
102. Penalty for falling trees.
103. Fallen trees to be removed.
104. Penalty for obstruction or encroachment.
105. How removed, and liability for not removing.
106. Private road.
107. Jury to determine necessity, and assess damages.

Highways by dedication.

SECTION 108. Copy, application and notice delivered to applicant.

109. Copy and notice to be served.
110. List of jurors.
111. Names struck off.
112. Place of meeting.
113. Jury to determine and assess damages.
114. Their verdict.
115. Value of highway discontinued.
116. Papers to be recorded in town clerk's office.
117. Damages to be paid before opening the road.
118. Fees of officers.
119. Motion to confirm, vacate or modify.
120. Costs of new hearing.
121. For what purpose private road to be used.
122. Highways or roads along division lines.
123. Adjournments.

SECTION 80. *Highways by dedication.*—Whenever land is dedicated to a town for highway purposes therein, the commissioners of highways in such town may, either with or without a written application therefor, and without expenses to the town, make an order laying out such highway, upon filing and recording in the town clerk's office with such order a release of the land from the owner thereof. A highway so laid out must not be less than two rods in width. Section ninety of this chapter does not apply to a highway by dedication. Such commissioners of highways may also, upon written application and with the written consent of the town board, make an order laying out or altering a highway in their town, upon filing and recording in the town clerk's office, with such application, consent and order, a release from all damages from the owners of the lands taken or affected thereby, when the consideration for such release, as agreed upon between such commissioners and owners, shall not in any one case,

Highways by dedication.

from any one claimant, exceed one hundred dollars, and from all claimants five hundred dollars. An order of the commissioners as herein provided shall be final.

Revised, from L. 1880, ch. 114, §§ 2, 3. Amended by L. 1897, ch. 204.

DEDICATION AND ACCEPTANCE.

See Village Law, § 144, Appendix, *post*, as to dedication of land for village streets.

Public highways may be created in four ways: (1) By proceedings under the statute; (2) by prescription or user for twenty years; (3) by dedication through offer and implied acceptance; (4) by dedication through offer and actual acceptance. (*Cohoes v. D. & H. C. Co.*, 134 N. Y. 397, and authorities cited; *Town of Corning v. Head*, 86 Hun, 12.)

Land may be dedicated to the use of the public for a highway without any writing. (*Cook v. Harris*, 61 N. Y. 448.)

Oral consent of the owner of lands to the laying out of a highway is valid unless revoked before the laying out. (*Marble v. Whitney*, 28 N. Y. 297.)

Lands dedicated by the owner to public use as streets do not become public highways until accepted by commissioners. (*Oswego v. Canal Co.*, 6 N. Y. 257; *Cohoes v. D. & H. C. Co.*, 134 N. Y. 397.)

To constitute a public highway by dedication there must not only be an absolute dedication, but an acceptance and formal opening by the proper authorities or by user. (*People v. Underhill*, 144 N. Y. 316; *contra*, *Clements v. West Troy*, 10 How. Pr. 199.)

Acceptance may be proved by long public use or by the acts and conduct of the public authorities recognizing and adopting the highway. (*People v. Loehfelm*, 102 N. Y. 1; *Cook v. Harris*, 61 N. Y. 448; *Holdane v. Cold Spring*, 21 N. Y. 474; *McMannis v. Butler*, 51 Barb. 436; *Denning v. Roome*, 6 Wend. 651; *Hunter v. Trustees*, 6 Hill, 407; *Abbott v. Cottage City*, 143 Mass. 521, and authorities cited; *McCormick v. City of Amsterdam*, 43 St. Rep. 604; *People v. Underhill*, 144 N. Y. 316.)

A dedication once made and accepted cannot be revoked. (*Cook v. Harris*, 61 N. Y. 448; *Cohoes v. D. & H. C. Co.*, 134 N. Y. 397.)

A dedication must, within a reasonable time, be followed by an acceptance; and the owner may, if not accepted within a reasonable time, recall the dedication; and he may at any time recall the dedication, if no rights have attached intermediate his act. What is a reasonable time must

Highways by dedication.

depend upon the particular circumstances of the case. (*Matter of Opening of Beck Street*, 19 Misc. 571; *Lee v. Sandy Hill*, 40 N. Y. 442.)

A dedication may be revoked before acceptance, but not after a user of more than twenty years. (*Eckerson v. Haverstraw*, 6 App. Div. 102.)

Where an owner of land dedicated it to the public for a highway but died before acceptance thereof, her death was held to be a revocation of the proposed dedication. (*People v. Kellogg*, 67 Hun, 546.)

Circumstances constituting evidence of dedication and acceptance. (*Cook v. Harris*, 61 N. Y. 448; *Rozell v. Andrews*, 103 N. Y. 150; *Iselin v. Starin*, 144 N. Y. 453.)

What is sufficient evidence of a dedication to the public. (*Wiggins v. Tallmadge*, 11 Barb. 457.)

Insufficient evidence of a dedication to the public use. (*Matter of Beach Ave.*, 70 Hun, 351.)

There is sufficient evidence of dedication where streets have been used for highway purposes for more than twenty years and have been worked by the public authorities. (*Eckerson v. Haverstraw*, 6 App. Div. 102.)

Where an owner of land files a map dividing such land into blocks, throws the streets open and constructs fences, there is sufficient evidence of dedication of the streets to public use. (*Eckerson v. Haverstraw*, 6 App. Div. 102.)

Where a city begins proceedings to condemn property for a street, it admits that the land has not been dedicated for a public highway by the owner. (*Matter of Extension of Ethel St.*, 3 Misc. 403.)

An order discontinuing a highway will be taken to be evidence of non-acceptance thereof. (*Matter of Opening of Beck Street*, 19 Misc. 571.)

Where a common council accepts by resolution streets laid out on a map and constructs a sewer in a portion thereof, the question of dedication and acceptance may go to the jury. (*McVee v. Watertown*, 92 Hun, 306.)

The use of a private way by the public does not make it a public highway without proof of dedication and acceptance. (*Palmer v. Palmer*, 150 N. Y. 139.)

Where a highway has been altered by consent of the owner of the land and has been used by the public for twenty-six years, it is a public highway although its boundaries have not been determined by the highway commissioners, and will be assumed to be of the same width as the original road. (*Wakeman v. Wilbur*, 147 N. Y. 657.)

Highways by dedication.

The power of a town to take lands for highway purposes by voluntary conveyance implies the power to take such interest as the necessity of the case may require. (*Hughes v. Bingham*, 135 N. Y. 347.)

When a highway is once shown to exist, it is presumed to continue until it is shown to exist no longer. (*Cohoes v. D. & H. C. Co.*, 134 N. Y. 397; *Beckwith v. Whalen*, 65 N. Y. 322; *Driggs v. Phillips*, 103 N. Y. 77.)

LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS; COMPENSATION TO LAND OWNERS.

See Constitution, Art. 3, § 18, Appendix, *post*, prohibiting special legislation on this subject; see Indian Law, § 12, Appendix, *post*, as to laying out highways on Indian reservation; Code of Civil Procedure, §§ 3357-3384, as to proceedings for the condemnation of real property; L. 1817, ch. 83, Appendix, *post*, as to power of highway commissioners over state roads; L. 1883, ch. 113, Appendix, *post*, as to the alteration of highways, streets and bridges in incorporated villages; Canal Law, § 110, Appendix, *post*, as to the alteration of highways in improving the canals; L. 1893, ch. 607, Appendix, *post*, providing for widening highways between cities and towns; L. 1895, ch. 611, and L. 1896, ch. 464, Appendix, *post*, as to discontinuance of highways where \$300,000 has been spent for macadamizing purposes and damages therefor; L. 1897, ch. 236, Appendix, *post*, as to widening and improving highways in towns of more than 8,000 inhabitants and containing villages of certain population; L. 1893, ch. 582, Appendix, *post*, as to the improvement of highways in Kings county; L. 1890, ch. 555, Appendix, *post*, as to the improvement of highways in Richmond county; L. 1898, ch. 45, and L. 1898, ch. 71, Appendix, *post*, as to the construction of bicycle paths in Cattaraugus and Monroe counties, respectively; L. 1897, ch. 596, Appendix, *post*, as to the acquisition of turnpike and plank roads by counties and villages.

See also, L. 1898, ch. 115, Appendix, *post*, known as the "Good Roads Act."

Discussion of section 18 of article 3 of the Constitution forbidding the legislature to pass any private or local act laying out highways. Whether a particular stream may be declared to be a public highway. (*Matter of Burns*, 16 App. Div. 507; *De Camp v. Thomson*, 16 App. Div. 528; *Matter of Burns*, 155 N. Y. 23.)

Powers of legislature before constitutional amendment of 1874. (*Ex parte Commissioners*, 51 Barb. 277; *Ex parte Central Park Extension*, 16

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Abb. Pr. 56; *People v. McDonald*, 4 Hun, 187; *People v. Supervisors*, 112 N. Y. 585.)

The legislature has power to open a highway without the instrumentality of highway commissioners. (*People v. McDonald*, 4 Hun, 187.)

The legislature may regulate by special act the widening of streets. (*People v. McDonald*, 69 N. Y. 362; *People v. Lohnas*, 54 Hun, 604.)

Where an act authorized land to be taken, under certain conditions, the Legislature could not afterwards abolish those conditions. (*Matter of R. R. Co.*, 58 Hun, 497.)

An act is unconstitutional which authorizes more land to be taken than is required for the opening of a street. (*Matter of Albany Street*, 11 Wend. 149.)

An act is unconstitutional which authorizes land to be taken for a highway without compensation. (*Wallace v. Karlenowefski*, 19 Barb. 118; *Gould v. Glass*, 19 Barb. 179; *People v. Supervisors*, 4 Barb. 64.)

Legislature cannot reduce width of road and vest surplus in former owner where he has already received compensation. (*People v. Commissioners*, 53 Barb. 70.)

Constitutionality of act authorizing construction of highways over railroad tracks without compensation. (*Railroad Co. v. Brownell*, 24 N. Y. 345.)

Compensation for value of buildings erected after resolution laying out street is passed. (*Matter of Wall Street*, 17 Barb. 617.)

Provisions of State Constitution as to mode of ascertaining compensation are for sole benefit of land owner and may be waived by him. (*Matter of Hand Street*, 55 Hun, 132.)

Method of ascertaining damages to adjacent owners by the closing of a road. (*Matter of Barclay*, 91 N. Y. 430.)

Compensation of city for lands owned by it in fee. (*Matter of Ninth Avenue*, 45 N. Y. 729.)

The passage of an ordinance to authorize the opening of a new street, is the exercise of a legislative power. (*Wiggin v. New York*, 9 Paige, 16.)

Neither the legislature nor a municipal corporation may close a street within the municipality without making compensation to an abutting owner; but it seems otherwise where there is other access to the lot of such owner. (*Egerer v. Railroad Co.*, 41 St. Rep. 488; *Wilson v. Railroad Co.*, 2 Supp. 65; *Fearing v. Irwin*, 55 N. Y. 486; *Ins. Co. v. Stevens*,

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101 N. Y. 411; *Holloway v. Delano*, 40 St. Rep. 702; *Brick Co. v. Haverstraw*, 42 St. Rep. 616.)

Commissioners of highways have power to vacate a road upon their own motion when it has become useless and unnecessary. (*People v. Pike*, 18 How. Pr. 70; *People v. Nichols*, 51 N. Y. 470.)

Commissioners of highways may alter public highways without the intervention of a jury. (*People v. McNeil*, 2 S. C. 140; *People v. Jones*, 63 N. Y. 306.)

Before a highway through improved land can be altered, a certificate of necessity is required, although the owner has released his damages. (*People v. Jones*, 63 N. Y. 306.)

Where a new road has been regularly laid out, it cannot be discontinued as an old one before it has been opened and used. (*People v. Griswold*, 67 N. Y. 60.)

Change of grade. (*Cunningham v. Fitzgerald*, 133 N. Y. 165; *Rauenstein v. Railroad Co.*, 136 N. Y. 528, and cases cited; *Matter of Smiddy*, 47 St. Rep. 409; *Smith v. Village of White Plains*, 67 Hun, 81; *Whitmore v. Village of Tarrytown*, 137 N. Y. 409.)

Discontinuance of proceedings to open street or highway before final termination. (*Matter of Dower Street*, 18 Johns, 506; *Martin v. Brooklyn*, 1 Hill; 545; *Military Parade Ground*, 2 Hun, 374; s. c., 60 N. Y. 319; *Matter of Anthony Street*, 20 Wend. 618; *Central Park Case*, 12 Abb. Pr. 107; *Matter of Beekman Street*, 20 Johns. 269; *Hawkins v. Rochester*, 1 Wend. 53; *People v. Syracuse*, 20 How. Pr. 491; *Matter of Washington Park*, 56 N. Y. 144; *People v. Commissioners*, 1 S. C. 193; *People v. Griswold*, 67 N. Y. 59; *People v. Mills*, 8 St. Rep. 754; *People v. Common Council of Syracuse*, 78 N. Y. 56; *Matter of Elmwood Avenue*, 10 St. Rep. 272; *Matter of Ferris*, 10 St. Rep. 480; *Matter of Lexington Avenue*, 40 St. Rep. 778.)

Common council of New York may not reduce width of street by authorizing lot-owners to fence in part thereof. (*Lawrence v. New York*, 2 Barb. 577.)

Ch. 604, L. 1874, relating to New York City. (*Matter of Spuyten Duyvil Parkway*, 67 How. Pr. 341.)

Ch. 697, L. 1867, relating to the closing of streets in New York City. (*Matter of Barclay*, 91 N. Y. 430; *People v. Board of Assessors*, 51 Hun, 407; *Fearing v. Irwin*, 55 N. Y. 486; *Peters v. Carleton*, 15 St. Rep. 980; *People v. Asten*, 62 N. Y. 623; 49 How. Pr. 405; *People v. Greene*, 62 N. Y. 624.)

Survey.

Ch. 559, L. 1871, relating to Brooklyn. (*McCormack v. Brooklyn*, 108 N. Y. 49; *Donnelly v. Brooklyn*, 121 N. Y. 9.)

City Charter of Buffalo. (*Broezel v. Buffalo*, 6 Supp. 723.)

City Charter of Rochester. (*Elwood v. Rochester*, 122 N. Y. 229; *Starr v. Rochester*, 6 Wend. 564; *Cuyler v. Rochester*, 12 Wend. 165.)

City Charter of Poughkeepsie. (*Matter of Washington Street*, 38 St. Rep. 346.)

The act of 1884 relating to Schenectady. (*Weinckie v. Railroad Co.*, 39 St. Rep. 584.)

See *Bucholz v. Railroad Co.*, 66 Hun, 377; *Excelsior Brick Co. v. Haverstraw*, 50 St. Rep. 513; *Matter of Opening Rogers Avenue*, 29 Abb. N. C. 361; *Peters v. New York*, 8 Hun, 405; *Matter of North Third Avenue*, 3 Supp. 641; *Matter of Commissioners*, 25 St. Rep. 231; *Matter of Bushwick Avenue*, 48 Barb. 9; *Baker v. Oneonta*, 15 W. D. 224; *Sage v. Brooklyn*, 8 Abb. N. C. 279; *Ex parte Manhattan Co.*, 22 Wend. 653; *People v. Judges*, 24 Wend. 249; *Matter of Extension of Ethel Street*, 3 Misc. 403; *Phillips v. Schumacher*, 10 Hun, 405; *Foot v. Stiles*, 57 N. Y. 399; *Miller v. Brown*, 56 N. Y. 383; *People v. Supervisors*, 20 N. Y. 252.

§ 81. Survey.— Whenever the commissioners of highways shall lay out any highway, either upon application to them or otherwise, they shall cause a survey thereof to be made, and shall incorporate the survey in an order to be signed by them, and to be filed and recorded in the office of the town clerk, who shall note the time of recording the same.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 55, and from L. 1880, ch. 114, §§ 2, 3.

See County Law, § 72, Appendix, *post*, providing that supervisors may direct commissioners of highways to survey and make records of any highways.

The order laying out the highway must either be signed by all the commissioners or must show that they were all notified to participate. (*Fitch v. Commissioners*, 22 Wend. 132; *People v. Hynds*, 30 N. Y. 470; s. c. 27 Barb. 94; *People v. Williams*, 36 N. Y. 441; *Simmons v. Sines*, 4 Abb. Dec. 246; *Matter of Summit Street*, 3 How. Pr. 26; *Matter of Church Street*, 49 Barb. 455; *Christy v. Newton*, 60 Barb. 332; *Chapman v. Swan*, 65

Survey.

Barb. 210; *Pratt v. People*, 13 Hun, 664; *Stewart v. Wallis*, 30 Barb. 344.)

One commissioner may not authorize another to sign his name to the order. (*Todd v. Todd*, 3 Hun, 298.)

All the commissioners need not be present when the survey is made. (*Marble v. Whitney*, 28 N. Y. 297.)

A writing signed by two commissioners of highways and a surveyor, which, although not a formal order, purports to be a survey of the road, is substantial compliance with the statute. (*Tucker v. Rankin*, 15 Barb. 471.)

Failure of a town clerk to post a copy of an order altering a highway, delivered to him by the highway commissioner, does not render the order absolutely void. (*Engleman v. Longhorst*, 120 N. Y. 332.)

The order may not be attacked collaterally after a lapse of fifty years. (*Dominick v. Hill*, 6 St. Rep. 329.)

The survey must be incorporated into the order. (*Pratt v. People*, 13 Hun, 664.)

When the survey is sufficiently incorporated in the order. (*McCarthy v. Whalen*, 19 Hun, 505.)

Survey need not specify the width. (*People v. Commissioners*, 1 Cow. 23.)

Commissioners not strictly limited to the route specified in the application, but must follow the general course of the road. (*Hallock v. Woolsey*, 23 Wend. 328; *People v. Carman*, 69 Hun, 118.)

Where a village, incorporated under the general act (L. 1870, ch. 291), in laying out a street, did not follow the route laid down in the petition, the proceedings were held void. (*People v. Whitney's Point*, 102 N. Y. 83.)

A village resolution widening a street should contain a description of the lands to be taken. (*Allen v. Northville*, 39 Hun, 240.)

Section 2 of chapter 114 of the laws of 1880, authorizing the commissioner of highways, on the petition of six freeholders, to lay out a road, and make and file an order containing a correct survey, declared unconstitutional. (*People v. Mosier*, 56 Hun, 64.)

A new road may be laid out partly over an old one; and in describing the new, a reference to the old one is sufficient. (*People v. Commissioners*, 37 N. Y. 360.)

See *People v. Commissioners*, 13 Wend 310; *Clements v. West Troy*, 10 How. Pr. 199; *Bruyn v. Graham*, 1 Wend. 370; *Woolsey v. Tompkins*, 23 Wend. 324; *Johnson v. Loveless*, 18 W. D. 49; *People v. Nash*, 38 St. Rep. 730; *Engleman v. Longhorst*, 120 N. Y. 332; *Matter of South Seventh Street*,

Application.

48 Barb, 12; *Sherman v. Kane*, 86 N. Y. 57; *Wildreck v. Hagar*, 19 N. Y. 656; *Kelsey v. Burgess*, 35 St. Rep. 368; *Mayer v. New York*, 100 N. Y. 284; *People v. Mills*, 109 N. Y. 69; *Kelly v. Horton*, 2 Cow. 424.

§ 82. *Application*.—Any person or corporation assessable for highway labor, may make written application to the commissioners of highways of the town in which he or it shall reside, or is assessable, to alter or discontinue a highway, or to lay out a new highway.

Revised from 1 R. S., ch. 16, tit. 1, art. 1, § 2; from 1 R. S., ch. 16, tit. 1, art. 4, § 54; from L. 1836, ch. 122.

Commissioners may lay out a highway without any application therefor. (*People v. Supervisors*, 20 N. Y. 252; *McCarthy v. Whalen*, 19 Hun, 505; *Gould v. Glass*, 19 Barb. 189; *Marble v. Whitney*, 28 N. Y. 297.)

To give commissioners of highways jurisdiction of proceedings to lay out a highway an application must be made to them in writing by a person liable to be assessed for highway labor. (*Harrington v. People*, 6 Barb. 607.)

Commissioners of highways, as such, may not make application to lay out a highway. (*People v. Supervisors*, 82 Hun, 298.)

Any person assessable for highway labor may make the application. (*People v. Eggleston*, 13 How. Pr. 123.)

A person liable to be assessed for highway labor in one town may initiate proceedings to lay out a highway located partly in his own town and partly in another town. (*People v. Keck*, 90 Hun, 499.)

Residents of a village within a town are not proper applicants for the laying out of a road in the town outside of the village. (*Commissioners v. Meserole*, 10 Wend. 123.)

Application to be filed with town clerk. (*People v. Vail*, 2 Cow. 623.)

As to the sufficiency of the application, under the charter of the city of Troy. (*Havermans v. Troy*, 50 How. Pr. 510.)

§ 83. *Application for commissioners*.—Whenever the land is not dedicated to the town for highway purposes and not released as herein provided, the applicant shall, within thirty days after presenting the application to the commissioners of highways, and after at least five

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days' notice to said commissioners of the time and place of the application to the county court, in this section provided for, by verified petition showing the applicant's right to so present the same, and that such application has been in good faith presented, and if the county judge require, on such notice to such parties interested as he shall direct, apply to the county court of the county where such highway shall be, for the appointment of three commissioners to determine upon the necessity of such highway proposed to be laid out or altered, or to the uselessness of the highway proposed to be discontinued and to assess the damages by reason of the laying out, opening, altering or discontinuing of such highway. Such application to the county court shall be accompanied by the written undertaking of the applicant executed by one or more sureties, approved by the county judge, to the effect that if the commissioners appointed determine that the proposed highway or alteration is not necessary or that the highway proposed to be discontinued is not useless, the sureties will pay to the commissioners their compensation at the rate of four dollars for each day necessarily spent and all costs and expenses necessarily incurred in the performance of their duties, which amount shall not exceed the sum of fifty dollars.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, §§ 60, 65, 81, as variously amended. Amended by L. 1894, ch. 334, and by L. 1897, ch. 344, § 1.

Notice of application to the county court for the appointment of commissioners need not be given to the highway commissioners. (*People v. Keck*, 90 Hun, 497.)

Compensation of commissioners under L. 1862, ch. 483. (*People v. Green*, 52 How. Pr. 440; *Matter of Spuyten Duyvil Parkway*, 27 Hun, 305; 14 W. D. 487.)

Requirements of notice of application in Albany. (*Matter of Orange Street*, 50 How. Pr. 244.) In New York city. (*Matter of Albany Street*, 6 Abb. Pr. 273.)

See *People v. Mosier*, 56 Hun, 64.

Appointment of commissioners and their duties.

§ 84. *Appointment of commissioners and their duties.*—Upon the presentation of such petition, the county court shall appoint three disinterested freeholders, who shall not be named by any person interested in the proceedings, who shall be residents of the county, but not of the town wherein the highway is located, as commissioners to determine the questions mentioned in the last section. They shall take the constitutional oath of office, and appoint a time and place at which they shall all meet to hear the commissioners of highways of the town where such highway is situated, and others interested therein. They shall personally examine the highway described in the application, hear any reasons that may be offered for or against the laying out, altering or discontinuing of the highway, and assess all damages by reason thereof. They may adjourn the proceedings before them from time to time, issue subpoenas and administer oaths in such proceedings, and they shall keep minutes of their proceedings, and shall reduce to writing all oral evidence given before them upon the subject of the assessment of damages. They shall make duplicate certificates of their decision, and shall file one in the town clerk's office of the town, and the other, with such minutes and evidence, in the county clerk's office of the county in which the highway or proposed highway is located.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 60, as amended by L. 1881, ch. 696, § 1.

See notes under §§ 86, 87 and 93, post, as to assessment of damages.

If the owner of land taken for a highway has a right to damages, it is the duty of highway commissioners to apply to the county court for the appointment of commissioners to assess such damages. (*Chapman v. Gates*, 46 Barb. 317.)

The court will not appoint the commissioners without affidavits as to their qualifications. (*Matter of Houston Street*, 7 Hill, 175.)

As to who are "disinterested freeholders." (*Matter of Twenty-sixth Street*, 12 Wend. 203; *People v. Cline*, 23 Barb. 197; *Matter of Southern*

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Boulevard, 3 Abb. Pr. (N. S.) 447; *Matter of South Seventh Street*, 48 Barb. 12; *People v. Syracuse*, 63 N. Y. 291; *Matter of Eleventh Avenue*, 49 How. Pr. 208; *People v. Scott*, 8 Hun, 566; *Matter of Middletown*, 21 Civ. Pro. 201.)

The provision of the Code of Civil Procedure, § 46, as to a judge sitting in a case when related to one of the parties, does not apply to commissioners under this section. (*Matter of Ogden Street*, 63 Hun, 188.)

It is too late, on a motion to confirm the report, to object that one of the commissioners was personally interested. (*Matter of Southern Boulevard*, 3 Abb. Pr. (N. S.) 447.)

The commissioners are not obliged to hold their meetings in any particular place in the town where the highway is situated. (*Matter of Coe*, 19 Misc. 549.)

Commissioners may administer oaths to witnesses. (*Matter of John Street*, 19 Wend. 659.)

The statute does not contemplate that commissioners appointed in proceedings to lay out a highway shall be governed by technical rules of evidence applied in courts of record. (*Matter of Pugh*, 22 Misc. 43.)

Opponents of the discontinuance of a highway owning property affected thereby have a right to be heard before the commissioners; the latter have no authority to oblige such owners to pay a sum of money for such privilege. (*Matter of Coe*, 19 Misc. 549.)

Validity of proceedings not affected by what facts. (*People v. Davis*, 38 Hun. 43; *People v. Potter*, 36 Hun, 181; *Buckley v. Drake*, 41 Hun, 385; *People v. Dolge*, 45 Hun, 310.)

The proceedings, under a special act, must strictly comply with the provisions thereof. (*Ex parte Commissioners*, 51 Barb. 277; *Schreiber's Appeal*, 53 How. Pr. 359.)

The Commissioners must all be present at the meetings; but a majority may decide. (*Babcock v. Lamb*, 1 Cow. 238.)

When an authority is conferred upon three, two may act. (*Woolsey v. Tompkins*, 23 Wend. 326.)

Where one of the commissioners dies and there is no provision for filling the vacancy, the survivors may continue the proceedings. (*People v. Syracuse*, 63 N. Y. 291.)

Majority of the commissioners have power to adjourn. (*Matter of Newland Avenue*, 38 St. Rep. 796.)

The commissioners appointed by the county court are not bound to

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follow the route of the petition for the road with precision, and an extension of one of the corners further than the petition is not erroneous if thereby a better road is obtained. (*People v. Carman*, 69 Hun, 118.)

A decision of the commissioners that a road should be altered "as in said notice applied for," held sufficient. (*Carris v. Commissioners*, 2 Hill, 443.)

Power of commissioners is exhausted when they have delivered the assessment to the highway commissioners. (*People v. Mott*, 60 N. Y. 649.)

See *King v. Brooklyn*, 42 Barb. 627; *Van Valkenburgh v. New York*, 43 Barb. 109; *Matter of Buffalo*, 39 State Rep. 417.

§ 85. Notice of meeting.—The applicant shall cause, at least eight days previous, written or printed notice to be posted up in not less than three public places in the town specifying, as near as may be, the highway proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners appointed by the county court to examine the highway as mentioned in the last section. Such notice shall also, in like time, be personally served on the owner and occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service cannot be made, copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, §§ 59, 62, and from L. 1873, ch. 69, § 1, as amended by L. 1878, ch. 114.

In any proceeding to condemn the private property of a citizen for a public use, all notices and hearings that may tend to give the party to be affected any semblance of benefit, must be carefully observed. (*People v. Kniskern*, 54 N. Y. 61.)

Commissioners acquire no jurisdiction to make an order laying out a highway, until notice in writing has been given to the occupants of the land. (*People v. Smith*, 7 Hun, 17; *People v. Supervisors*, 36 How. Pr. 544.)

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No title is acquired to lands not embraced in the notice. (*Matter of Newland Avenue*, 38 St. Rep. 796.)

Occupant of land through which a road is contemplated must have notice, and his attendance as a witness will not be deemed a waiver of notice. (*People v. Osborn*, 20 Wend. 187.)

Notice given to the occupant of land not vitiated because it erroneously stated that some of the improved lands were unimproved. (*Snyder v. Trumppour*, 38 N. Y. 360.)

To send the notices by mail is not a compliance with the statute. (*People v. Stedman*, 57 Hun, 280.)

In an action by commissioners of highways to recover penalties for obstructing a highway, it is unnecessary for the plaintiffs to show that all the preliminary steps to the laying out of the road were taken. (*Chapman v. Gates*, 46 Barb. 317.)

Ch. 114, L. 1880, is unconstitutional, it not providing for notice to land owners. (*People v. Mosier*, 56 Hun, 64.)

Notice must be given of the hearing before a jury in re-assessing damages under ch. 455, L. 1847. (*People v. Gray*, 49 Hun, 465; *People v. Tallman*, 36 Barb. 222.)

See *Case v. Thompson*, 6 Wend. 634; *Matter of Art Street*, 20 Wend. 685; *Bouton v. Brooklyn*, 2 Wend. 395; *Matter of William Street*, 19 Wend. 678; *People v. Whitney's Point*, 32 Hun, 508; s. c. 102 N. Y. 81.

§ 86. *Decision of commissioners in favor of application.*—If a majority of the commissioners appointed by the county court shall determine that the highway or alteration applied for is necessary, or that the highway proposed to be discontinued is useless, they shall assess all damages which may be required to be assessed by reason thereof and make duplicate certificates to that effect.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 63, and from L. 1880, ch. 114, § 2.

See notes under § 80, *ante*, as to "Compensation to Land Owners."

See Constitution, Art. 1, § 7, *post*, as to method of ascertaining damages.

See notes under § 87, *post*, as to "Assessment of Benefits."

The question of damages is solely one for the commissioners, and their decision can not be disturbed on appeal. (See notes under § 89, *post*.)

Decision of commissioners in favor of application.

Evidence must show and commissioners must find that a highway to be abandoned is *useless*; it is not enough to find it *unnecessary*, or that a new road would be better. (*Matter of Coe*, 19 Misc. 549.)

Formerly the land owner could elect the mode of assessing damages. (*Johnston v. Supervisors*, 19 Johns. 272.)

Objection to manner of assessment of damages cannot be raised in a collateral suit. (*Cooper v. Bean*, 5 Lans. 318.)

A written agreement between the land owners and commissioners is a good assessment. (*People v. Supervisors*, 20 N. Y. 252.)

A corporation taking land for street purposes is directly liable to the owner, in spite of an assessment empowering such owner to look to adjoining lot-holders. (*Sage v. Brooklyn*, 89 N. Y. 189; *Genet v. Brooklyn*, 94 N. Y. 645; 114 N. Y. 618.)

Where the commissioners decide to depart from the proposed width, they should notify the land owners and hear them upon the question of damages. (*Matter of Feeney*, 20 Misc. 272.)

Measure of damages is present market value of the property. (*Matter of William Street*, 19 Wend. 678.)

The assessment may estimate the value of the land at a certain sum per foot. (*Coles v. Williamsburgh*, 10 Wend. 659.)

A widow entitled to dower in the land is entitled to the value of her life-estate. (*Matter of William Street*, 19 Wend. 678.)

Damages for destruction of building erected over the line of a street. (*Matter of Furman Street*, 17 Wend. 649.)

Damages where owner previously offered to dedicate the land. (*Matter of the Terrace*, 39 St. Rep. 270.)

In taking evidence as to damages, affidavits of disinterested parties may be received, but are not conclusive upon the commissioners; the owners may not be examined. (*Matter of John Street*, 19 Wend. 659; *Matter of William Street*, 19 Wend. 678; *Matter of Twenty-ninth Street*, 1 Hill, 189.)

Before rendering their report as to damages, the commissioners may be required to examine additional affidavits. (*Ex parte Department of Public Works*, 13 Hun, 483.)

Parties who knew of the assessment proceedings and neglected to lay their proof before the commissioners, are concluded. (*Matter of John Street*, 19 Wend. 659.)

In the report of damages, it is sufficient if the property owners be

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described without being specially named. (*Granger v. Syracuse*, 38 How. Pr. 308.)

When the claims of title are conflicting, the damages should be awarded to "owners unknown." (*Matter of Eleventh Avenue*, 49 How. Pr. 208; see, also, in this connection, *Ex parte De Wint*, 1 Cow. 595; 2 Cow. 498; *Re Bogart's Estate*, 1 Wend. 41; *Ex parte Department of Parks*, 73 N. Y. 560; *Fisher v. New York*, 57 N. Y. 344; *Matter of Eleventh Avenue*, 81 N. Y. 436; *Matter of William Street*, 19 Wend. 678; *Pollock v. Morris*, 105 N. Y. 676.)

Where an award of damages was made to the husband of the owner, the proceedings were not thereby invalidated. (*Mitchell v. White Plains*.)

Separate sums as damages should be awarded to lessor and lessee; but if only one sum is awarded the former, the latter may recover from him his proportionate share. (*Coutant v. Catlin*, 2 Sand. Ch. 485.)

Where separate sums are awarded each, the decision is conclusive as between lessor and lessee. (*Turner v. Williams*, 10 Wend. 139; *Coutant v. Catlin*, 2 Sand. Ch. 485.)

Value of leasehold interest; how estimated. (*Ex parte Commissioners*, 54 How. Pr. 313.)

A lessee's right of renewal should be considered in fixing his damages. (*Matter of William Street*, 19 Wend. 678.)

Rights of grantors and grantees to damages. (*Livingston v. New York*, 8 Wend. 85; *Matter of Furman Street*, 17 Wend. 649; *Baldwin v. Buffalo*, 35 N. Y. 375; *Matter of Pierce*, 24 Abb. N. C. 134; *Matter of Munson*, 9 St. Rep. 126; *New York v. Curran*, 24 Abb. N. C. 128.)

When the assessment of the commissioners is completed and delivered to the commissioners of highways, their power is exhausted. (*People v. Mott*, 60 N. Y. 649.)

See *Matter of City of Rochester*, 24 App. Div. 383; *Dexter v. Alfred*, 74 Hun, 259; *People v. Whitney*, 17 W. D. 456; *People v. Supervisors*, 3 Barb. 332; *People v. Supervisors*, 12 Barb. 446; *People v. Supervisors*, 19 Wend. 102; *Matter of 181st St.*, 35 St. Rep. 548; *Reinhardt v. Buffalo*, 39 St. Rep. 304; *Matter of Department of Public Parks*, 36 St. Rep. 516; *Matter of 127th St.*, 56 How. Pr. 60; *Riker v. New York*, 3 Daly, 174.

ASSESSMENT OF DAMAGES BY JURY.

The provisions of the various former statutes, relative to the assessment and re-assessment of damages by a jury, have all been either repealed or rendered obsolete by the highway law.

Damages in certain cases, how estimated.

Decisions applicable to former statutes. (*People v. White*, 59 Barb. 666; *People v. Eldridge*, 3 Hun, 541; *Clark v. Miller*, 42 Barb. 255; *Patchin v. Brooklyn*, 2 Wend. 377; s. c., 8 Wend. 47; *People v. Lewis*, 26 How. Pr. 378; *People v. Supervisors*, 34 N. Y. 268; *People v. See*, 29 Hun, 216; *Canal Bank v. Albany*, 9 Wend. 244; *Matter of William Street*, 19 Wend. 678; *Commissioners v. Judges*, 7 Wend. 264; *Owners v. Albany*, 15 Wend. 374; *Buckley v. Drake*, 41 Hun, 384; *People v. Dains*, 38 Hun, 43; *Clark v. Stillman*, 18 W. D. 232; *People v. Potter*, 36 Hun, 181; *People v. Schellenger*, 32 St. Rep. 353; *People v. Weld*, 6 St. Rep. 173; *People v. Dolge*, 45 Hun, 310; *Tiffany v. Gifford*, 24 St. Rep. 906; *Matter of Main Street*, 98 N. Y. 454; *People v. Robinson*, 8 St. Rep. 840; *People v. Brown*, 47 Hun, 459.)

§ 87. Damages in certain cases, how estimated.—The owner of lands within the bounds of a highway discontinued may inclose the same and have the exclusive use thereof, and the benefits resulting therefrom may be deducted in the assessment of damage caused by the laying out of a highway through his other lands in place of the discontinued highway.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 64, as amended by L. 1847, ch. 455, § 22; from 1 R. S., ch. 16, tit. 1, art. 4, § 71; and from L. 1880, ch. 114, § 3.

Right of owner to fence in old road when new one is laid out on his lands. (*Engleman v. Longhorst*, 120 N. Y. 332.)

When acquiescence in the use of a highway by the people, deemed a waiver by the owner of right to damages. (*Chapman v. Gates*, 46 Barb. 313.)

Constitutionality of chap. 455 of Laws of 1847. (*Clark v. Miller*, 42 Barb. 263.)

See *Matter of Pearl Street*, 19 Wend. 651; *Matter of William Street*, 19 Wend. 678.

ASSESSMENT OF BENEFITS.

The references under this heading have application to the opening and improvement of streets in cities and villages where a portion at least of

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the cost of such improvement is assessed directly upon the property benefited.

Assessment should be on basis of benefit over loss and damage. (*Matter of Fourth Avenue*, 3 Wend. 452; *Canal Bank v. Albany*, 9 Wend. 244; *Matter of Albany Street*, 11 Wend. 149; *Matter of Degrav Street*, 18 Wend. 568; *Matter of William Street*, 19 Wend. 678; *Matter of Riverside Park*, 63 Barb. 282.)

The amount of benefit should be determined by ascertaining the market value of the property with the improvement and without it. (*Elwood v. Rochester*, 43 Hun. 102; s. c., 122 N. Y. 229.)

Cemetery lands should be exempted. (*Matter of Eleventh Avenue*, 49 How. Pr. 208.)

Railroad lands should not be exempted without explanation thereof. (*Matter of Cedar Park*, 1 How. Pr. (N. S.) 257.)

The bed of a railroad is not benefited by a street being opened across it. (*Railroad Co. v. Morrisania*, 7 Hun, 652; *Railroad Co. v. Kane*, 9 Hun, 506; s. c., 72 N. Y. 614.)

Relief by court from improper assessment. (*Murray v. Graham*, 22 Wend. 559; *Merrill v. Brooklyn*, 3 Edw. Ch. 421; *Elwood v. Rochester*, 43 Hun, 102; s. c., 122 N. Y. 229.)

Where land is taken for a street, the increased value of the owner's adjoining property may be set off against the damage sustained. (*Betts v. Williamsburgh*, 15 Barb. 255; *Livingston v. New York*, 8 Wend. 85; *Wyman v. New York*, 11 Wend. 486.)

The power to levy assessments for local improvements exists only where it is distinctly conferred by legislative authority. (*Stebbins v. Kay*, 123 N. Y. 31.)

Report of commissioners of estimate; objections thereto; confirmation of. (*Matter of John Street*, 19 Wend. 659; *Matter of William Street*, 19 Wend. 678; *Matter of Spuyten Duyvil Parkway*, 67 How. Pr. 341; *Matter of Fourth Avenue*, 11 Abb. Pr. 189; *Brodhurst v. Turnpike Co.*, 16 Johns. 8; *Matter of Munson*, 9 St. Rep. 126; *Matter of Livingston Street*, 18 Wend. 556; *Matter of Church Street*, 49 Barb. 455.)

Long Island City. (*Matter of Woolsey*, 95 N. Y. 135; *Matter of Flushing Avenue*, 101 N. Y. 678.)

Albany. (*Ex parte Albany*, 23 Wend. 277; *Canal Bank v. Albany*, 9 Wend. 244.)

New York. (*Gilbert v. Havemeyer*, 2 Sand. 506; *Matter of Commissioners of Public Parks*, 47 Hun, 302; *Matter of New York*, 27 St. Rep. 188; *Astor*

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v. New York, 62 N. Y. 580; *Matter of Eleventh Avenue*, 49 How. Pr. 208; *Matter of 138th Street*, 60 How. Pr. 290.)

Syracuse. (*People v. Syracuse*, 63 N. Y. 291.)

Brooklyn. (*People v. Brooklyn*, 17 W. D. 543; *Genet v. Brooklyn*, 99 N. Y. 293; s. c., 114 N. Y. 618.)

Rochester. (*Elwood v. Rochester*, 43 Hun, 102; 122 N. Y. 229.)

Amsterdam. (*Matter of Amsterdam*, 126 N. Y. 158.)

See *Stebbins v. Kay*, 123 N. Y. 31; *Lowerre v. New York*, 46 Hun, 253; *Tingue v. Port Chester*, 101 N. Y. 294.)

§ 88. *Decision of commissioners denying application.*—If a majority of the commissioners appointed by county court shall determine that the proposed highway or alteration is not necessary, or that the highway proposed to be discontinued is not useless, they shall make duplicate certificates to that effect. The costs and expenses necessarily incurred by such commissioners in the proceedings shall be indorsed upon such duplicate certificates, and upon a confirmation of such decision and of the amount of such costs and expenses by the county court, such costs and expenses not exceeding fifty dollars shall be payable by the applicants.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 82. Amended by L. 1894, ch. 334.

§ 89. *Motion to confirm, vacate or modify.*—Within thirty days after the decision of the commissioners shall have been filed in the town clerk's office any party interested in the proceeding may apply to the court if in session or to the county judge appointing the commissioners for an order confirming, vacating or modifying their decision, and such court or judge may confirm, vacate or modify such decision. If the decision be vacated the court or judge may order another hearing of the matter before the same or other commissioners. If no such

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motion is made, the decision of the commissioners shall be deemed final. Such motion shall be brought on, upon the service of papers upon adverse parties in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein; and the decision of the county court or judge shall be final, excepting that a new hearing may be ordered as herein provided. If the final decision shall be adverse to the applicant, no other application for laying out, altering or discontinuing the same highway shall be made within two years.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, §§ 84-90, as amended by L. 1845, ch. 180, and L. 1847, ch. 455. Amended by L. 1895, ch. 716.

See §§ 92, 152, *post*, as to costs on such motion.

Declaratory of the statute. (*People v. Van Alstyne*, 32 Barb. 131.)

The right to appeal does not exist in the case of a local highway act unless especially conferred thereby. (*People v. Lawson*, 17 Johns. 277.)

Each owner of improved lands is entitled to a separate appeal. (*Clark v. Phelps*, 4 Cow. 190.)

The limit of time provided by this section within which an appeal may be taken to the county court, relates to the time of instituting the motion by service of notice thereof and not to the hearing thereof. (*Matter of Glenside Woolen Mills*, 92 Hun, 188.)

Formerly held that a decision refusing to lay out, etc., could be reviewed within four years. (*People v. Jones*, 63 N. Y. 306.)

Notice of appeal. (*King v. Reed*, 9 Supp. 616.)

Notice of appeal must be served on each commissioner and each land-owner. (*Commissioners v. Claw*, 15 Johns. 537; *People v. Osborn*, 20 Wend. 186; *People v. Lawrence*, 54 Barb. 589; *Metcalf v. Garlinghouse*, 40 How. Pr. 50.)

An appeal suspends the powers of the commissioners, and if they act before their acts are affirmed by a decision they are trespassers. (*Clark v. Phelps*, 4 Cow. 190; *People v. Temple*, 27 Hun, 128.)

An appeal from an order discontinuing a public highway does not justify the removal of an obstruction thereon before the determination of the appeal. (*Drake v. Rogers*, 3 Hill, 604.)

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When petitioner should be made a party defendant in proceedings to review. (*People v. County Court*, 92 Hun, 13.)

Who may be heard on appeal. (*Matter of Coe*, 19 Misc. 549; *Matter of Oakley Avenue*, 85 Hun, 446.)

Objection to the sufficiency of the petition to lay out a highway should be raised by motion to set aside the order appointing the commissioners and not upon a motion to confirm, vacate or modify. (*Matter of Pugh*, 22 Misc. 43.)

What facts and evidence should be considered upon the appeal. (*People v. Goodwin*, 5 N. Y. 568; *People v. Judges*, 23 Wend. 360; *Matter of John Street*, 19 Wend. 659; *Matter of William Street*, 19 Wend. 678; *Matter of Pacific Street*, 1 Den. 623; *Matter of Emmons Ave.*, 17 St. Rep. 722.)

Upon an appeal from an order discontinuing a highway, the burden is upon the respondent to show that the highway is useless and unnecessary. (*People v. Nichols*, 51 N. Y. 470.)

The court has no power or authority to interfere with the findings or decision of the commissioners upon the question of damages. (Const., art. 1, § 7; *Matter of Feeney*, 20 Misc. 272; *People v. Thayer*, 88 Hun, 136; *Matter of Carpenter*, 11 Misc. 690; *Matter of Pugh*, 22 Misc. 43.)

It was formerly held, however, that the court could entertain and decide motions to confirm an assessment of damages, and could review the assessment by certiorari. See decisions applicable to certiorari proceedings under this section; see, also, *Le Roy v. New York*, 20 Johns. 430; *Owners v. Albany*, 15 Wend. 374; *Matter of Furman Street*, 17 Wend. 649; *Matter of Mt. Morris Square*, 2 Hill, 14; *Matter of Hand Street*, 52 Hun, 206; *Matter of Henry Street*, 7 Cow. 400; *Matter of Pearl Street*, 19 Wend. 651; *Matter of John Street*, 19 Wend. 659; *Ex parte Commissioners*, 51 Barb. 277; *Ex parte Central Park*, 16 Abb. Pr. 56; *Matter of Southern Boulevard*, 3 Abb. Pr. (N. S.) 447; *Matter of Bushwick Avenue*, 48 Barb. 9; *Matter of South Seventh Street*, 48 Barb. 12; *Matter of Union Avenue*, 59 How. Pr. 228; *Matter of 138th Street*, 60 How. Pr. 290; *Matter of Harman Street*, 16 Johns. 231; *Matter of Dover Street*, 1 Cow. 74; *Matter of Albany Street*, 11 Wend. 149; *Matter of Eleventh Avenue*, 49 How. Pr. 208; *Matter of Third Street*, 6 Cow. 571; *Matter of Eleventh Avenue*, 81 N. Y. 436; *Buell v. Lockwood*, 8 N. Y. 55.

Uncertainty in the description of the highway to be laid out is good ground for setting aside the proceedings. (*People v. Diver*, 19 Hun, 263.)

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The court is not authorized under this section to designate the width of a proposed highway. (*Matter of Feeney*, 20 Misc. 272.)

An order, on appeal, that the road be laid out as applied for, is a sufficient direction to the commissioners to lay it out. (*People v. Commissioners*, 1 Cow. 23.)

Costs on appeal. (*Cary v. Marston*, 56 Barb. 27; *Disosway v. Winant*, 1 Abb. Dec. 508.)

An order of the county court under this section is final; it cannot be reviewed by certiorari or appeal. (*People v. County Court*, 4 App. Div. 542; *Matter of Taylor & Allan*, 8 App. Div. 395.)

An appeal lies from the decision of the county court; it may not be reviewed by certiorari. (*People ex rel. R. R. Co. v. County Court*, 152 N. Y. 214; *Matter of De Camp*, 151 N. Y. 557; *People v. Nash*, 38 St. Rep. 730; *Matter of Kingsbridge Road*, 4 Hun, 599; s. c., 62 N. Y. 645.)

As to appeals from the proceedings of a municipal corporation in laying out and widening its streets. (*Matter of Kingsbridge Road*, 4 Hun, 599 s. c., 62 N. Y. 645; *Brooklyn v. Meserole*, 26 Wend. 132; *Merrill v. Brooklyn*, 3 Edw. Ch. 421; *Guest v. Brooklyn*, 69 N. Y. 506; *Kennedy v. Troy*, 77 N. Y. 493.)

The regularity of the proceedings of the commissioners cannot be reviewed by the supervisors. (*People v. Supervisors*, 7 Wend. 531; *People v. Supervisors of Kings County*, 16 Wend. 520.)

Certiorari will not lie under the present statute to review the decision of the commissioners; the above section being broad enough to confer all powers of review upon the county court by appeal. (*People v. Thayer*, 88 Hun, 136.)

Decisions applicable to certiorari proceedings under former statutes. (*People v. Melville*, 7 Misc. 214; *People v. Stedman*, 57 Hun, 280; *Patchin v. Brooklyn*, 13 Wend. 664; *Matter of Washington Park*, 1 Sand. 283; *Patchin v. Brooklyn*, 2 Wend. 377; s. c., 8 Wend. 47; *Bogart v. New York*, 7 Cow. 158; *Matter of Carlton Street*, 20 Wend. 685; *Ex parte Sanders*, 4 Cow. 544; *People v. Whitney*, 17 W. D. 456; *People v. Heddon*, 32 Hun, 299; *People v. Dolge*, 45 Hun, 310; *People v. Hildreth*, 126 N. Y. 360; *People v. Moore*, 39 St. Rep. 881; *People v. Supervisors*, 7 Wend. 531; *People v. Supervisors*, 16 Wend. 520; *People v. County Court*, 92 Hun, 13; *Beardslee v. Dolge*, 143 N. Y. 160.)

Under the former statutes from which this section was revised, appeals were heard by three judges of the Common Pleas or by three referees ap-

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pointed by the county judge. (*People v. Brown*, 47 Hun, 59; *People v. Commissioners*, 57 N. Y. 549; *People v. Commissioners*, 8 N. Y. 476; *People v. Kniskern*, 54 N. Y. 52; *People v. Connor*, 46 Barb. 333; *Terpenning v. Smith*, 46 Barb. 208; *People v. Robertson*, 17 How. Pr. 74; *People v. Crosier*, 26 How. Pr. 195; *People v. Barber*, 12 Barb. 193; *People v. Plainfield*, 7 How. Pr. 27; *People v. Watertown*, 7 How. Pr. 28; *People v. Baker*, 19 Barb. 240; *People v. Ferris*; 41 Barb. 121; *People v. Van Alstyne*, 32 Barb. 131; *People v. Burton*, 65 N. Y. 452; *People v. Sherman*, 15 Hun, 575; *People v. Harris*, 63 N. Y. 391; *People v. Strevell*, 27 Hun, 218; *Rector v. Clark*, 78 N. Y. 21; *People v. Heddon*, 32 Hun, 299; *People v. Talmage*, 46 Hun, 603; *People v. Carman*, 47 Hun, 380; *Harris v. Whitney*, 6 How. Pr. 175; *Commissioners v. Judges*, 7 Wend. 264; *Commissioners v. Judges*, 25 Wend. 453; *People v. Champion*, 16 Johns. 61; *Commissioners v. Judges*, 13 Wend. 433; *Ex parte Commissioners*, 1 Cow. 142; *Snyder v. Trumpeour*, 38 N. Y. 355; *Canal Bank v. Albany*, 9 Wend. 244; *Matter of Beekman Street*, 20 Johns. 269; *Striker v. Kelly*, 7 Hill, 9; *People v. Cortelyou*, 36 Barb. 164; *People v. Sweet*, 18 W. D. 258.)

See *Matter of James*, 43 Hun, 67; *Commissioners of Carmel v. Judges of Putnam*, 7 Wend. 264; *People v. Strevell*, 27 Hun, 218; *Matter of 163rd Street*, 40 St. Rep. 684; *Matter of Lexington Avenue*, 40 St. Rep. 723; *People v. Haverstraw*. 47 St. Rep. 891; *Matter of Highway at Tappan*, 83 Hun, 613.

§ 90. Limitations upon laying out highways.— No highway shall be laid out less than three rods in width, nor through an orchard of the growth of four years or more, or any garden cultivated as such for four years or more, or grape vineyard of one or more year's growth, and used in good faith for vineyard purposes, or buildings, or any fixtures or erections for the purposes of trade or manufactures, or any yard or inclosure necessary to the use and enjoyment thereof, without the consent of the owner or owners thereof, unless so ordered by the county court of the county in which the proposed highway is situated; such order shall be made on the certificate of the commissioners of highways of the town or towns in which

Limitations upon laying out highways.

the proposed highway is situated, showing that the public interest will be greatly promoted by the laying out and opening of such highway, and that commissioners appointed by the court have certified that it is necessary; a copy of the certificate, with eight days' notice of the time and place of the hearing before the county court, shall be served on the owners of the land, or if they are not residents of the county, upon the occupants; the county court upon such certificates, and the proofs and other proceedings therein, may order the highway to be laid out and opened, if it deems it necessary and proper. The commissioners of highways shall then present the order of the county court, with the certificate and proofs upon which it was granted, certified by such court to the general term of the supreme court in the judicial department in which the land is situated, upon the usual notice of motion, served upon the owner or occupant, or the attorney who appeared for them in the county court. If such general term of the supreme court shall confirm the order of the county court, the commissioners of highways shall then lay out and open such highway as in other cases. The provisions of this section shall not apply to vineyards planted, or to buildings, fixtures, erections, yards or inclosures, made or placed on such land after an application for the laying out and opening the highway shall have been made. In case the highway to be laid out shall constitute an extension or continuation of a public highway already in use, and shall not, as to such new portion, exceed half a mile in length, the commissioners may lay out such extension or continuation, of a width of less than three rods, provided, however, that it be not less than the widest part of the highway of which it is an extension or continuation. In such case the commissioners shall specify in their certificate the precise width of the new portion of such highway, and shall certify that

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such width is as great at least as the widest part of the highway of which it is a continuation or extension.

Revised from L. 1869, ch. 24, § 1, and from 1 R. S., ch. 16, tit. 1, art. 4, §§ 57, 58, 80, as amended by L. 1873, ch. 773. Amended by L. 1895, ch. 508.

See Insanity Law, § 33, as to opening roads through lands of state hospital.

As to the power of commissioners to lay out a road through buildings, etc., under the original act. (*Clark v. Phelps*, 4 Cow. 190; *Harrington v. People*, 6 Barb. 607.)

A verbal consent by the owner to the laying out of a highway through his cultivated land, is sufficient, if acted upon before revocation. (*People v. Albright*, 14 Abb. Pr. 305; *People v. Goodwin*, 5 N. Y. 568; *McCarthy v. Whalen*, 19 Hun, 503; s. c., 87 N. Y. 148; *Marble v. Whitney*, 28 N. Y. 297; *Benedict v. Calkins*, 45 Hun, 549; see *Fowler v. Mott*, 19 Barb. 204.)

A promise to pay the owner a certain sum for his consent to the laying out of a road through his lands may be enforced by action. (*Noyes v. Chapin*, 6 Wend. 461.)

An order laying out a highway through cultivated, improved or enclosed grounds should be signed by all the commissioners or show that all participated or were notified so to do. (*People v. Hynds*, 30 N. Y. 470; *People v. Commissioners*, 27 Barb. 94.)

As to whether such a highway is "necessary and proper" depends upon the circumstances of the case. (*People v. Ireland*, 75 Hun, 600.)

Whether or not the yard or inclosure comes within the statute depends upon the nature and situation thereof. (*Lansing v. Caswell*, 4 Paige, 523; *People v. Cowles*, 3 T. & C. 766.)

Whether the land desired is a garden is a question of fact. (*People v. Moore*, 39 St. Rep. 881.)

Garden, barn-yard and bee-yard within the statute. (*People v. Temple*, 27 Hun, 128; *Matter of James*, 43 Hun, 67; *People v. Commissioners*, 57 N. Y. 549; *People v. Horton*, 8 Hun, 357.)

Door-yard within the statute. (*Ex parte Clapper*, 3 Hill, 458.)

Unoccupied land next to a saw-mill held not to be such a "yard or inclosure" as to require the owner's consent; also a mill-race is not within the statute. (*People v. Kingman*, 24 N. Y. 559.)

As to what did not constitute an orchard. (*People v. Schellenger*, 32 St. Rep. 353.)

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Whether consent to the opening of a road through cultivated land or buildings shall be granted must depend greatly upon the particular circumstances. (*Matter of Four-Corner Road*, 37 St. Rep. 711; *People v. Moore*, 39 St. Rep. 881; *People v. Commissioners*, 42 Hun, 463.)

The county court can not modify the decision of the commissioners so as to designate the width of the highway. (*Matter of Feeney*, 20 Misc. 272.)

An order directing the laying out of a new road is not void because part of it is upon the bed of an old road two rods wide. (*Snyder v. Plass*, 28 N. Y. 465; *Snyder v. Trumppbour*, 38 N. Y. 355.)

Motion to confirm order of county court laying out a highway denied on ground proof fails to show its necessity. (*Matter of Town of Hampton*, 21 App. Div. 623.)

As to who may oppose the confirmation of the order of the county court by the appellate division. (*Matter of Oakley Avenue*, 85 Hun, 446.)

Where the order laying out the highway does not comply with the requirements of the statute in the matter of stating the width, courses, etc., the order will be reversed upon appeal. (*People v. Diver*, 19 Hun, 263.)

A certificate, approved by the county court and general term, is nevertheless not conclusive of the right to locate the road. (*People v. Temple*, 27 Hun, 128.)

As to the power of the board of supervisors to authorize the laying out of a highway of a less width than is now required by statute. (*People v. Dains*, 38 Hun, 43; *Phillips v. Schumacher*, 10 Hun, 411.)

As to the power of a board of supervisors to appoint special commissioners to lay out a road through a building, under L. 1838, ch. 314, and L. 1848, ch. 164. (*People ex rel. Sammis v. Supervisors*, 12 Supp. 21; s. c., 58 Hun, 371.)

See *Matter of James*, 43 Hun, 67; *Elwood v. City of Rochester*, 43 Hun, 109; s. c., 122 N. Y. 229; *Snyder v. Plass*, 28 N. Y. 465; *Snyder v. Trumppbour*, 38 N. Y. 355; *People v. Scott*, 8 Hun, 566; *People v. Strevell*, 27 Hun, 218; *Matter of Oakley Avenue*, 85 Hun, 446; *Commissioners v. Judges*, 7 Wend. 264; *Herrick v. Stover*, 5 Wend. 580; *Gould v. Glass*, 19 Barb. 179; *People v. Commissioners*, 27 Barb. 94; *Harrington v. People*, 6 Barb. 607; *Carris v. Commissioners*, 2 Hill, 443; *Patchin v. Brooklyn*, 2 Wend. 377.

Laying out highways through burying grounds.

HIGHWAYS CROSSING RAILROADS.

A public highway may be laid out across the track of a railroad company, without compensation, though the company has purchased the fee. (*Railroad Co. v. Greenbush*, 5 Lans. 461; *Railroad Co. v. Kerr*, 45 Barb. 138; *Ex parte Kerr*, 42 Barb. 119; Railroad Law, *post*; *Railroad Co. v. Silverstone*, 46 St. Rep. 141.)

This right extends to the whole roadbed. (*D. & H. C. Co. v. White-hall*, 90 N. Y. 21.)

But not to land condemned for depot purposes, or where tracks are laid for storing cars. (*Railroad Co. v. Greenbush*, 52 N. Y. 510; *Railroad Co. v. Williamson*, 91 N. Y. 552; *Railroad Co. v. Brunnell*, 24 N. Y. 345; *Matter of Alexander Avenue*, 44 St. Rep. 546.)

Such an act will be restrained by injunction. (*Railroad Co. v. Brownell*, 24 N. Y. 345; *Railroad Co. v. Williamson*, 18 W. D. 257.)

The legislature, under the constitution, may require a railroad company to construct a bridge to carry a turnpike road over its track. (*People v. Boston & Albany R. R. Co.*, 70 N. Y. 569.)

See as to an incorporated village opening a street through a railroad "yard." (*Matter of Folts Street*, 18 App. Div. 568.)

A railroad company may appeal from an order laying out a street across its track. (*People v. May*, 27 Barb. 238.)

See L. 1853, ch. 62, Appendix, *post*, regulating the construction of roads over railroad tracks.

See notes under § 100, *post*, as to "Uses of Highways."

§ 91. *Laying out highways through burying grounds.*—No private road or highway shall be laid out or constructed upon or through any burying ground, unless the remains therein contained are first carefully removed, and properly reinterred in some other burying ground, at the expense of the persons desiring such road or highway, and pursuant to an order of the county court of the county in which the same is situated, obtained upon notice to such persons as the court may direct.

Revised from L. 1868, ch. 843, § 1.

For a discussion as to the general policy of the legislature in regard to the taking of cemeteries and burying grounds for public purposes, see *Matter of Board of Street Opening*, 62 Hun, 499.

Costs, by whom paid.

§ 92. **Costs, by whom paid.**—In all cases of assessments of damages by commissioners appointed by the court, the costs thereof shall be paid by the town except when reassessment of damages shall be had on the application of the party for whom the damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment; and when application shall be made by two or more persons for the reassessment of damages, all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to them by the first assessment, and may be recovered by action in favor of any person entitled to the same. Each commissioner appointed by the court, for each day necessarily employed as such, shall be entitled to four dollars and his necessary expenses.

Revised from L. 1847, ch. 455, § 7. Amended by L. 1897, ch. 344, § 2.

See § 152, *post*, as to costs on motions.

“Costs” as referred to in this section are costs which may be allowed to one of the parties under the provisions of section 152. (*People ex rel. Bevins v. Supervisors*, 82 Hun, 298.)

The term “costs” cannot be deemed to apply to a bill for legal services rendered by an attorney employed by the highway commissioner. A highway commissioner cannot bind the town except under a power expressly conferred by statute and so would be personally liable for such a bill. (*People ex rel. Bevins v. Supervisors*, 82 Hun, 298.)

When the commissioners report in favor of a proposed highway and assess the damages but the proceeding fails because of the absence of the necessary consent of the owner or certificate of the highway commissioners, the costs of the proceeding and the fees of the commissioners should be borne by the applicant. (*Matter of Miller*, 9 App. Div. 260; see § 83 of Highway Law, *ante*.)

Fees of commissioners are not a charge upon the town where the proceeding to lay out a highway fails. (*Matter of Miller*, 9 App. Div. 206.)

§ 93. **Damages assessed, and costs to be audited.**—All damages to be agreed upon, or which may be finally

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assessed, and costs against the town, as herein provided, shall be laid before the board of town auditors, or in towns not having a board of town auditors, before the town board, to be audited with the charges of the commissioners, justices, surveyors or other persons or officers employed in making the assessment, and for whose services the town shall be liable, and the amount shall be placed upon the town abstract and levied and collected in the town in which the highway is situated, and the money so collected shall be paid to the commissioners of highways of such town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges aforesaid.

Revised from L. 1847, ch. 455, § 23. Amended by L. 1898, ch. 106.

The amendment of 1898 removes the auditing of the assessed damages from the board of supervisors to the town board.

See notes under § 86, *ante*.

See notes under § 92, *ante*, on *People ex rel. Bevins v. Supervisors*, 82 Hun, 298.

See notes under § 87, *ante*, on "Assessment of Benefits."

The legislature has power to lay a tax for the opening of a highway and may confer power to sell real estate in order to pay an assessment. (*Striker v. Kelly*, 7 Hill, 9; *Rexford v. Knight*, 15 Barb. 627; *Stebbins v. Kay*, 51 Hun, 589; s. c., 123 N.Y. 31.)

Damages can be assessed as provided in the highway act and no more can be levied and collected of the town. (*People v. Supervisors*, 28 N.Y. 116.)

The payment or assessment of damages, held not to be a condition precedent to the right to open the road. (*Case v. Thompson*, 6 Wend. 634.)

It is not a good objection to a bill for damages presented against a town that the road was built for state purposes. (*People v. Supervisors*, 20 N.Y. 253.)

Who is the owner in a legal sense. (*Smith v. Ferris*, 6 Hun, 553.)

Liability for interest on award of damages in city. (*Barnes v. New York*, 27 Hun, 236.)

Municipal assessment for widening a street is a lien upon the premises. (*New York v. Colgate*, 12 N.Y. 140.)

When officers of different towns disagree about highways.

Municipal assessment in New York city under act of 1869. (*Matter of Broadway*, 49 N. Y. 150.)

Board of supervisors adjourning without acting upon claim for damages. (*People v. Supervisors*, 20 N. Y. 252.)

See *People v. Supervisors*, 5 Cow. 292; *Matter of Lexington Avenue*, 3 Hun, 221; *People v. Supervisors*, 16 Wend. 520.

§ 94. When officers of different towns disagree about highway.—When the commissioners of highways of any town, or officers of any village or city having the powers of commissioners of highways, shall differ with the commissioners of highways of any other town, or with the officers of such a village or city having the powers of commissioners of highways in the same county, relating to the laying out of a new highway or altering an old highway extending into both towns, or a town and a village or city, or when commissioners of highways of a town in one county, shall differ with the commissioners of highways of a town, or the officers of a village or city having the powers of commissioners of highways, in another county, relating to the laying out of a new highway, or the alteration of an old highway, which shall extend into both counties, the commissioners of highways of both towns, or the officers of the village or city having such powers, shall meet on five days' written notice, specifying the time and place, within some one of such towns, villages, or cities, given by either of such commissioners or officers having powers of commissioners of highways, to make their determination in writing, upon the subject of their differences. If they cannot agree, they or either of them may certify the fact of their disagreement to the county court of the county, if the proposed highway is all in one county, or if in different counties, or if the county judge is disqualified or unable to act, to the supreme court; such court shall thereupon appoint three commissioners, freeholders of the county, not residents

Difference about improvements.

of the same town, village or city where the highway is located; or if between two counties, then freeholders of another county, who shall take the constitutional oath of office, and upon due notice to all persons interested, view the proposed highway, or proposed alteration of a highway, administer all necessary oaths, and take such evidence as they shall deem proper, and shall decide (subject to the approval of the court, as hereinafter provided) all questions that shall arise on the hearing, as to the laying out or altering of such highway, its location, width, grade and character of road-bed, or any point that may arise relating thereto; and if they decide to open or alter such highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the land through which such new or altered highway is proposed to pass, and shall report such evidence and decision to such court, with their assessment of damages, if any, with all convenient speed. On the coming in of such report, the court may, by order, confirm, modify or set aside the report in whole or in part, and may order a new appraisal by the same or other commissioners, and shall decide all questions that may arise before it. And all orders and decisions in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 72, as amended by L. 1881, ch. 513.

An order of the special term setting aside a report of highway commissioners of different counties is appealable where it does not appear that the commissioners first met and certified to the fact of their disagreement. (*Matter of Barrett*, 7 App. Div. 482.)

§ 95. *Difference about improvements.*— When the commissioners of highways of a town, or the officers of a village or city having the powers of commissioners of high-

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ways therein, shall desire to make a new or altered highway extending beyond the bounds of such town, village or city, a better highway than is usually made for a common highway, with a special grade or road-bed, drainage or improved plan, and are willing to bear the whole or a part of the expense thereof beyond such bounds, but cannot agree in regard to the same, upon written application of either of the commissioners or officers, and notice to all parties interested, such court shall make an equitable adjustment of the matters, and may direct, that in consideration of the payment of such portion of the additional expense by the town, village or city that desires the improved and better highway, shall be equitable, its officers, contractors, servants and agents may go into such town, village or city, and make the grade and road-bed, and do whatever may be necessary and proper for the completion of such better highway, advancing the money to do it; the amount of damages to each owner or occupant, shall be ascertained and determined by commissioners, who shall be appointed, and whose proceedings shall be conducted in the manner provided by the last preceding section; and upon the coming in of their report of damages, and of the expenses paid, such court shall, on notice to all parties interested, direct that the amount of damages assessed to each owner or occupant, if any, and all such expenses be paid by each, any or all of such towns, villages or cities as shall be just and equitable, and the damages and expenses assessed and allowed, as in this and the last preceding sections, shall be paid and collected as if fixed by the commissioners of highways of the towns, or the officers of such villages or cities having the powers of such commissioners. Every commissioner appointed as herein provided, shall be

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paid six dollars for each day actually and necessarily employed in such service and necessary expenses.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 72, as amended by L. 1881, ch. 513.

§ 96. *Highway in two or more towns.*—When application is made to lay out, alter or discontinue a highway located in two or more towns, all notices or proceedings required to be served upon the commissioners of highways, shall be served upon the commissioners of highways of each town; and the commissioners appointed by the court, shall determine the amount of damages to be paid by each town, and when the towns are in different counties, the application for the appointment of commissioners shall be made to a special term of the supreme court held in the district where the highway or some part of it is located; and the same proceedings shall thereafter be had in the supreme court of such district as are authorized by this chapter to be had in the county court.

New.

If a person living in one town initiates proceedings to lay out a highway lying partly in that and partly in another town, and complies with all the statutory requirements, and the towns are in the same county, the county court is authorized to appoint commissioners in the matter. (*People v. Keck*, 90 Hun, 499.)

The only notice of proceeding required to be served upon the commissioners is the application to lay out the highway; the statute nowhere requires the petitioner to serve notice of his application to the county court for the appointment of commissioners upon the highway commissioner of the town or towns. (*People v. Keck*, 90 Hun, 497.)

See *People v. Supervisors*, 112 N. Y. 585.

§ 97. *Laying out, dividing and maintaining highway upon town line.*—An application to lay out a highway upon the line between two or more towns shall be

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made to the commissioners of highways of each town, who shall act together in the matter; and, upon laying out any such highway, they shall divide into two or more highway districts, in such manner that the labor and expense of opening, working and keeping the same in repair through each of such districts may be equal, as near as may be, and to allot an equal number of the districts to each of the towns; each district shall be considered as wholly belonging to the town to which it shall be allotted, for the purpose of opening and improving the highway and for keeping it in repair; and the commissioners of highways shall cause the highway and the partition and allotment thereof to be recorded in the office of the town clerk in each of the respective towns. If such highway be upon a line between one or more towns and a city or incorporated village, such application shall also be made to the officers of such city or village having the powers of commissioners of highways, and such officers may agree with the highway commissioners of such towns as to the division of the labor and expense of opening, working and maintaining such highway. Whenever such officers shall disagree as to such division, application may be made for the appointment of commissioners, and the same procedure shall be had as is prescribed in this article for the settlement of disagreements between the highway officers of different towns. All highways heretofore laid out upon the line between any two towns or between a town and a city or an incorporated village shall be divided and allotted or redivided and re-allotted, recorded and kept in repair, in the manner above directed.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, §§ 73-76. Amended by L. 1894, ch. 727, and by L. 1895, ch. 181.

See L. 1870, ch. 311, Appendix, *post*, as to allotment of parts of highway on town line to be maintained by respective towns.

The omission to record the agreement or allotment of districts as

Final determination, how carried out.

required by this section does not effect its validity. (*Jones v. City of Utica*, 16 Hun, 441.)

See *People v. Mosier*, 56 Hun, 64.

§ 98. Final determination, how carried out.—The final determinatiion of commissioners appointed by any court, relating to the laying out, altering or discontinuing a highway, and all orders and other papers filed or entered in the proceedings, or certified copies thereof from the court where such determination, order and papers are filed and entered, shall be forthwith filed and recorded in the town clerk's office of the town where the highway is located; and every such decision shall be carried out by the commissioners of highways of the town, the same as if they had made an order to that effect.

New.

See notes under § 81, *ante*.

Whenever it shall be finally determined that a highway shall be laid out, it is made the duty of the commissioner of highways to carry out such determination, and thereafter he has general charge of the same. But until such determination is finally made, he has no part or duty in the proceedings.

Upon a review by certiorari of the proceedings in county court relative to laying out a highway, the highway commissioner is not properly a party defendant. (*People, &c. v. County Court*, 92 Hun, 13.)

§ 99. Highways abandoned.—Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway. The commissioners of highways shall file, and cause to be recorded in

Highways abandoned.

the town clerk's office of the town, written description, signed by them, of each highway so abandoned, and the same shall thereupon be discontinued.

Revised from L. 1853, ch. 174, § 15, and 1 R. S., ch. 16, tit. 1, art. 4, § 99, as amended by L. 1861, ch. 311, § 1.

See L. 1895, ch. 611, Appendix, *post*, as to the abandonment of highways by towns which have expended three hundred thousand dollars or more for macadamizing purposes; and see, also, L. 1896, ch 464, Appendix, *post*, as to the payment of damages in such case.

See notes under § 80, *ante*.

Declaratory of the statute. (*Ludlow v. Oswego*, 25 Hun, 260; *Horey v. Haverstraw*, 124 N. Y. 273; *People v. N. Y. C. R. R. Co.*, 69 Hun, 166.)

Once established, a highway does not cease to be such until it has been discontinued by the proper authorities. (*Driggs v. Phillips*, 103 N. Y. 77.)

The public may abandon its claim to a public highway, and non-user for twenty years is some evidence of such intent. When in connection with non-user there is affirmative evidence of a clear determination to abandon, the public interest is extinguished. (*Crain v. Fox*, 16 Barb. 184; *Corning v. Gould*, 16 Wend. 531; *Amsbry v. Hinds*, 46 Barb. 622; s. c., 48 N. Y. 57; *Woodruff v. Paddock*, 56 Hun. 288; *Matter of Opening of Beck Street*, 19 Misc. 571; *Falvey v. Bridges*, 40 St. Rep. 732.)

When a road is laid out as an entirety and only a part is opened and worked, and the remainder remains entirely closed, the public loses its rights therein after the lapse of six years, and such rule is applicable to a city street where an easement only is acquired. (*Buffalo v. Hoffeld*, 6 Misc. 197.)

Under this section, it is not necessary that the highway should be worked in every part so long as it is passable for travelers. (*McVee v. Watertown*, 92 Hun, 306.)

The failure to open and work a portion of a highway would not invalidate so much thereof as had been opened and worked in compliance with the statute. (*Vandemark v. Porter*, 40 Hun, 397; *Walker v. Caywood*, 31 N. Y. 51.)

That part of a highway not opened and worked ceases to be a highway for any purpose. (*Christy v. Newton*, 60 Barb. 332.)

Where a road was partly opened and worked during the year it was laid out, and was partly worked throughout the route and more or less traveled every year thereafter for twelve years, it was held to have been

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opened and worked within six years. (*Marble v. Whitney*, 28 N. Y. 297.)

Effect of compulsory abandonment by the public. (*Freeholders v. Glen and Florida*, 20 St. Rep. 394.)

Abandonment by plank road company. (*Heath v. Barman*, 49 Barb. 496.)

This section held not to apply to streets laid out in the cities of the state. (*Matter of Lexington Ave.*, 29 Hun, 305; s. c., 92 N. Y. 629; *Vanderbeck v. City of Rochester*, 46 Hun, 87; s. c., 122 N. Y. 285; but see *Buffalo v. Hoffeld*, 6 Misc. 197.)

See *Lyon v. Munson*, 2 Cow. 426, construing the act of 1813 as to the abandonment of highways.

See *Matter of Opening of Beck Street*, 19 Misc. 571; *De Peyster v. Mali*, 27 Hun, 439; s. c., 92 N. Y. 262; *Blackman v. Riley*, 138 N. Y. 318.

§ 100. **Highways by use.**—All lands which shall have been used by the public as a highway for the period of twenty years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the commissioners of highways shall order the overseers of highways to open all such highways to the width of at least two rods.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, §§ 100, 101.

WHAT ARE HIGHWAYS.

Definition of Highway.

A highway may be defined as any place open and free to the public for passage either on foot or by vehicle. In such manner did the English law construe the term. Mr. Cook, in his Manual of Highway Laws, says: "The term 'highway' extends to all public ways, and includes carriage-ways, horsegways, footways, streets, turnpike and plank roads, railroads, ferries, canals and navigable rivers." Abundant authority for such statement may be found in the common law and the case law of this state. The term "road" in the New York statutes is used synonymously with "highway." (*Brace v. N. Y. C. R. R. Co.*, 27 N. Y. 269.)

A highway may be of any size or width; it need not be wide enough to permit vehicles to pass each other. (*Rex v. Lyon*, 3 Dow. & R. 497). It may be a footpath or bridleway only. (*Rex v. County*, 13 East, 95.)

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Piers.

A public pier or landing place is a highway. (*Radway v. Briggs*, 37 N. Y. 256; *People v. Lambier*, 5 Den. 9; *Fowler v. Mott*, 19 Barb. 204.)

Driftway.

A way on which cattle are driven, formerly termed a "driftway," is a highway, as cattle may be driven over any public highway. (*Ballard v. Dyson*, 1 Taunt. 285.)

Streets.

City and village streets, open to the public, are public highways. (*Brace v. N. Y. C. R. R. Co.*, 27 N. Y. 271; *Benedict v. Goit*, 3 Barb. 259; *Adams v. R. R. Co.*, 11 Barb. 449.) See, also, *Corbett v. Troy*, 53 Hun, 228.

Shores.

The margins of navigable lakes and rivers in this state are not highways except by express grant or prescription. (*Ledyard v. Ten Eyck*, 36 Barb. 102.) And a private wharf extending into a navigable river does not become a highway thereby (*Wetmore v. Atlantic & C. Co.*, 37 Barb. 70), unless such wharf or bulk-head forms the termination of a public highway (*People v. Lambier*, 5 Den. 9.) The seashore is not a public highway. The right to pass over may exist, but no claim for damages for a defect therein can lie. (*Murphy v. Brooklyn*, 98 N. Y. 642; s. c., 118 N. Y. 575.)

Cul de Sac.

It is now well settled that a highway need not be a thoroughfare. A *cul de sac* may be a highway. (*Rugby Charity v. Merriweather*, 11 East, 375; *Bateman v. Black*, 14 Eng. Law & Eq. 69; *People v. Kingman*, 24 N. Y. 559; *People v. Van Alstyne*, 3 Keyes, 35; *Hickok v. Trustees*, 41 Barb. 457; *McCarthy v. Whalen*, 19 Hun, 503; *Saunders v. Townsend*, 26 Hun, 308; *contra*, *Trustees v. Otis*, 37 Barb. 50.) A highway terminating in a navigable river is not a *cul de sac*, as there is still a thoroughfare, the right of passage extending from one kind of highway to another. (*People v. Lambier*, 5 Denio, 9.)

See, also, *Wiggins v. Tallmadge*, 11 Barb. 457.

Ferries.

A ferry is a public highway and the public have a right to embark and

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disembark at the landing places, provided the landing places be highways. (*Fowler v. Mott*, 19 Barb. 204; *Peters v. Kendal*, 6 Barn. & Cress. 703.)

Turnpikes.

A highway does not cease to be such for general purposes by being converted into a turnpike or plank road. (*Benedict v. Goit*, 3 Barb. 459; *Walker v. Caywood*, 31 N. Y. 51.)

Where a plank road company abandons its road, such road passes to the town, though not originally a public highway. (*Heath v. Barnam*, 49 Barb. 496; *People v. Supervisors*, 151 N. Y. 190.)

Railroads.

A railroad is a public highway to be used in a particular manner. (*Rex v. Railway Co.*, 2 Barn. & Ald. 646; *Beekman v. Railroad Co.*, 3 Paige, 74; *Sun Publishing Assn. v. The Mayor*, 152 N. Y. 257.)

When a railroad company abandons its road it becomes a public highway. (*Hayward v. Mayor*, 7 N. Y. 314; *Rexford v. Knight*, 11 N. Y. 308.)

Canals.

Canals, authorized by public law, are public highways, with the right of toll attached. (*Robinson v. Chamberlain*, 34 N. Y. 389; *Conkling v. Phoenix Mills*, 62 Barb. 229.)

Navigable Rivers.

A navigable river is a public highway. (10 Mod. 382.)

At common law, a river was navigable in which the tide ebbed and flowed. (*Ex parte Jennings*, 6 Cow. 518; *Morgan v. King*, 35 N.Y. 458.)

In this state it seems to be the law that a navigable river is one navigable in fact. (*People v. Canal Appraisers*, 33 N. Y. 461.)

A river, navigable in fact, is, in this state, one that is so far navigable in its natural state as to be of public use in the transportation of property. (*Morgan v. King*, 35 N. Y. 454; *Munson v. Hungerford*, 6 Barb. 265; *Curtis v. Keesler*, 14 Barb. 511.)

Capacity of a stream to float logs, as affecting its character as a public highway. (*DeCamp v. Thompson*, 16 App. Div. 528.)

Use of waterway for floating logs. (*Matter of Burns*, 155 N. Y. 23.)

Rivers and streams as public highways. (Navigation Law, §§ 70-76, Appendix, post.)

It is the general rule that public streets which lead to navigable waters

 Highways by use.

keep even pace with the extension of the land; but where it was the evident intention of the one who dedicated the land for the street that the highway should terminate at a ferry landing, land redeemed from the waters by the ferry owners does not become part of the highway. (*Mark v. West Troy*, 151 N. Y. 453.)

. *Particular Cases.*

When streets become highways under charter of city of Troy. (*Caven v. City of Troy*, 15 App. Div. 163.)

New York and Albany post road preserved forever as a public highway. (L. 1896, ch. 423, Appendix, *post.*)

Way by Necessity.

See *Hines v. Hamburger*, 14 App. Div. 577.

HIGHWAYS BY USE.

Premises used as highways by the public for twenty years, even without dedication, become public highways. (*Town of Corning v. Head*, 86 Hun, 12; *City of Cohoes v. Railroad Co.*, 134 N. Y. 397; *James v. Sammis*, 132 N. Y. 239; *City of Cohoes v. D. & H. C. Co.*, 134 N. Y. 397; *Snyder v. Plass*, 28 N. Y. 465; *Porter v. Village of Attica*, 33 Hun, 605; *Galatian v. Gardner*, 7 Johns. 106; *Devenpeck v. Lambert*, 44 Barb. 596; *Chapman v. Swan*, 65 Barb. 210; *Matter of Shawangunk Kill Bridge*, 100 N. Y. 642; *Wiggins v. Tallmadge*, 11 Barb. 457; *Miller v. Garlock*, 8 Barb. 153; *People v. Fowler*, 43 St. Rep. 415; *Kelsey v. Burgess*, 35 St. Rep. 369; *Post v. Ry. Co.*, 34 St. Rep. 487.)

The mere fact that a portion of the public travel over a road for twenty years cannot make it a highway, and the burden of making highways and sustaining bridges cannot be imposed upon the public in that way. The user must be like that of highways generally. The road must not only be traveled upon, but it must be kept in repair or taken in charge and adopted by the public authorities. (*Speir v. New Utrecht*, 121 N. Y. 420; *People v. Osborn*, 84 Hun, 441; *Flack v. Green Island*, 122 N. Y. 107; *Matter of Hand Street*, 52 Hun, 206; *People v. Loehfelm*, 102 N. Y. 1; *Vandermark v. Porter*, 40 Hun, 397; *Harriman v. Howe*, 78 Hun, 280.)

A particular place, claimed to be a public highway, cannot be proven to be such by parol evidence alone. (*Harrington v. People*, 6 Barb. 607.)

A private way opened by the owners of land through which it passes for their own use does not become a public highway merely because the

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public are also permitted for many years to travel over it. (*Speir v. New Utrecht*, 121 N. Y. 420; *Harriman v. Howe*, 78 Hun, 280; *People v. Osborn*, 84 Hun, 441; see, also, *In re Howland Bridge*, 14 Supp. 845.)

It seems to have been formerly the doctrine that a highway by use must be limited in width and location to the actual use thereof, and that commissioners could not widen or otherwise alter the boundaries. (*People v. Cortland*, 24 Wend. 491; *Talmadge v. Huntling*, 29 N. Y. 447; *Wakeman v. Wilbur*, 21 St. Rep. 556.)

As to the right to open an old road to the width of two rods. (*Snyder v. Plass*, 28 N. Y. 465.)

The failure of the highway commissioners to open an old highway to its proper width for thirty years does not extinguish the rights of the public in the parts not opened. (*Walker v. Caywood*, 31 N. Y. 51.)

A highway by use not laid out according to statute may be less than four rods wide. (*Harlow v. Humiston*, 6 Cow. 189.)

The failure to record is immaterial, as recording does not establish or create a right, but perpetuates the evidence of such right. (*Galatian v. Gardner*, 7 Johns. 106; *Cole v. Van Keuren*, 4 Hun, 262; *Lewis v. Railroad Co.*, 123 N. Y. 496.)

A *cul de sac* may become a public highway by dedication and acceptance, arising principally through user. (*Vandemark v. Porter*, 40 Hun, 397; *People v. Kingman*, 24 N. Y. 559; *Wiggins v. Tallmadge*, 11 Barb. 457; *People v. Van Alstyne*, 3 Abb. Ct. of App. Dec. 575.)

See note to *Whitesides v Green*, 57 American State Reports, 740. See, also, *Alpaugh v. Bennett*, 59 Hun, 45; *People v. Lawson*, 17 Johns. 277; *Ausable Co. v. Hargraves*, 16 St. Rep. 318; s. c., 121 N. Y. 695; *Matter of Trustees of Olean*, 37 St. Rep. 350; *Wicks v. Thompson*, 38 St. Rep. 340; *Denning v. Roome*, 6 Wend. 651; *Colden v. Thurber*, 2 Johns. 424; *Ivory v. Deer Park*, 116 N. Y. 476; *Lansing v. Wiswall*, 5 Den. 213.

THE USES OF HIGHWAYS AND OWNERSHIP OF THE FEE.

The Fee of the Highway.

The ownership of the fee of a highway under the Dutch law was in the public. Subsequently it became vested in the English government and was only transferred by grant. (*Mott v. Clayton*, 9 App. Div. 181.)

The ownership of the fee of a highway remains in the original owner; the public have but a right of way. (*Cortelyou v. Van Brunt*, 2 Johns. 357; *Yates v. Hathaway*, 15 Johns. 447; *Babcock v. Lamb*, 1 Cow. 238;

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Gedney v. Earl, 12 Wend. 98; *Presbyterian Society v. Railroad Co.*, 3 Hill, 567; *Higgins v. Reynolds*, 31 N. Y. 151; *Mann v. Worrall*, 53 N. Y. 44; *Turnpike Co. v. Smith*, 15 Barb. 355; *People v. Law*, 34 Barb. 494; *Cemetery v. Railroad Co.*, 7 Hun, 655; *Matter of City of Buffalo*, 131 N. Y. 293; *Woodruff v. Paddock*, 130 N. Y. 618.)

A grant of land by the state describing such land as abutting upon a highway conveys to the center thereof. (*Cheney v. Railroad Co.*, 8 App. Div. 620.)

The rule that an owner of lands bounded by a highway has a fee to the center of the road subject only to the public easement is applicable to the streets of New York city. (*Mott v. New York*, 2 Hilt. 358.)

In the city of New York, the fee of the streets is held to be in the city, and the legislature may appropriate them to such public use as a railroad. (*People v. Kerr*, 27 N. Y. 188.) But such grant may not be made by the common council of the city except for the purposes of carrying out the legislative grant. (*Milhau v. Sharp*, 27 N. Y. 611; *Davis v. Mayor*, 14 N. Y. 506; *People v. Railroad Co.*, 30 How. 121.)

When the title of the owner to lands taken for the opening of streets in the city of New York under the acts of 1813 and 1818, was divested. (*Detnold v. Drake*, 46 N. Y. 318; *Hannersly v. New York*, 67 Barb. 35.)

Where an old road is vacated, the fee is in the adjoining owners and not in the public. (*Van Amringe v. Barnett*, 8 Bos. 357; *Matter of John St.*, 19 Wend. 659; *Yates v. Hathaway*, 15 Johns. 447; *Falvey v. Bridges*, 40 St. Rep. 732; s. c., 133 N. Y. 663.)

Navigable rivers, being public highways, the bed of the stream belongs to the state. Otherwise as to non-navigable streams. (*People v. Canal Appraisers*, 33 N. Y. 461.) The state has no right, without compensation to destroy the property of individuals by making by artificial means a stream navigable. (*Canal Commissioners v. People*, 5 Wend. 423; *Canal Appraisers v. People*, 17 Wend. 571; *Commissioners v. Kempshall*, 20 Wend. 404.)

Canals, though public highways, belong to the state. The fee of the lands taken for them is in the state, and upon abandonment does not revert to the original owner. (*Rexford v. Knight*, 11 N. Y. 308.)

Where a highway has been laid out upon the margin of a grantor's land, the ownership of the fee therein passes by his subsequent grant. (*Haberman v. Baker*, 128 N. Y. 253.)

Ownership of the fee.

Adverse possession of a highway does not ripen into title unless exclusive and continuous for twenty years. (*Bliss v. Johnson*, 94 N. Y. 235.)

Title to a portion of a public highway cannot be acquired by adverse possession. (*Morrison v. N. Y. Elevated R. R. Co.*, 74 Hun, 398.)

Where the conveyance of land describes it as bounded by a highway, the particular circumstances of the case must determine whether or not an ownership to the center of the highway was intended to be granted. (*Post v. Hazlett*, 36 St. Rep. 219; *Dexter v. Riverside Mills*, 39 St. Rep. 933; *De Witt v. Van Schoyk*, 110 N. Y. 7; *Mott v. Clayton*, 9 App. Div. 181; *Haight v. Littlefield*, 71 Hun, 285; *Holloway v. Southmayd*, 139 N. Y. 390; *Lord v. Atkins*, 138 N. Y. 184.)

Where land is granted bounded by a contemplated street only, a fee to the middle of the street is not passed; but the grantees have a perpetual right of way over it. (*Matter of 17th St.*, 1 Wend. 262; *Livingston v. New York*, 8 Wend. 85.)

Where land is taken for the laying out of a street, the owner of the fee may excavate the soil beneath the surface of the road provided he does not interfere with the public easement. (*McCarthy v. Syracuse*, 46 N.Y. 194; *Rummell v. Railroad Co.*, 30 St. Rep. 235; *Darker v. Beck*, 32 St. Rep. 193.)

Materials taken from a street in making city improvements belong neither to the city nor to the contractor, but to the owner of the fee. (*Fisher v. Richardson*, 6 Lans. 225.)

The fundamental idea of a highway is a place for the uninterrupted passage of men, animals and vehicles, and to afford light, air and access to the property of abutting owners; in the latter respect, an abutting owner has a greater interest in the highway than the general public; consequently any permanent or exclusive use of any part of the highway by any person or corporation is illegal. (*Palmer v. Larchmont Electric Co.*, 6 App. Div. 12.)

Although streets in a city and roads in a country district are equally public highways, yet the former are subject to more burdens and uses than the mere right of passage. City highways may be used for the laying down of water mains, gas mains, sewers, lamps, etc., while such a use cannot be made of country highways without legislative enactment. This use of city streets has been extended to the erection of a soldiers' monument. (*Milhau v. Sharp*, 15 Barb. 210; *People v. Kerr*, 27 N. Y. 202; *Kelsey v. King*, 32 Barb. 410; *Tompkins v. Hodgson*, 4 Supp. 435; *Plant v.*

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R. R. Co., 10 Barb. 16; *Chapman v. R. R. Co.*, 10 Barb. 360.) It seems, however, that this doctrine is not applicable to highways acquired by dedication. (*Williams v. R. R. Co.*, 16 N. Y. 97.)

A further easement for public use may be imposed upon land already used as a public highway. (*Village of Canandaigua v. Benedict*, 24 App. Div. 348.)

Where a street is taken for other municipal uses than the mere right of passage, an abutting owner who has a fee therein is entitled to substantial damages. (*Matter of City of Buffalo*, 131 N. Y. 293.)

Steam Railroads.

The easement of an owner in fee is not lost by his dedication of the land for a public highway, and he is entitled to compensation for use thereof by a railroad. (*Syracuse Salt Co. v. Railroad Co.*, 67 Hun, 153, and cases cited.)

A railroad laid in a public highway or street is a new burden upon the owners of the fee and they are entitled to compensation therefor. (*Williams v. Railroad Co.*, 16 N. Y. 97; *Trustees v. Railroad Co.*, 3 Hill, 567; *Fletcher v. Railroad Co.*, 25 Wend. 462; *Mahon v. Railroad Co.*, 24 N. Y. 658; *Robinson v. Railroad Co.*, 27 Barb. 512; *Wager v. Railroad Co.*, 25 N. Y. 526; *Carpenter v. Railroad Co.*, 24 N. Y. 655; *Broiestadt v. Railroad Co.*, 55 N. Y. 220; *McCruden v. Rochester Ry. Co.*, 5 Misc. 59.)

An action of ejectment, or of trespass for damages, or in equity for an injunction, will lie where a railroad has used a street or highway without compensating the owner of the fee. (*Wager v. Railroad Co.*, 25 N. Y. 526; *Lozier v. Railroad Co.*, 42 Barb. 465; *Church v. Railroad Co.*, 3 Hill, 567; *Craig v. Railroad Co.*, 39 N. Y. 404.)

An abutting owner of land on a street closed for railroad purposes is deprived of an easement and should be compensated therefor even though the fee to the street be in the city. (*Egerer v. Railroad Co.*, 130 N. Y. 108.)

Where a railroad company constructs its road over or along a turnpike or plank road, the company operating the latter is entitled to damages. (*Plank Road v. Railroad*, 20 Barb. 644; *Seneca Road Co. v. Railroad Co.*, 5 Hill, 170; *Railroad Co. v. Northern Turnpike Co.*, 16 Barb. 100; *Matter of Hamilton Avenue*, 14 Barb. 405; *Matter of Flatbush Avenue*, 1 Barb. 286.)

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As to the consent of highway commissioners to the construction of a railroad upon a highway. (L. 1835, ch. 300, Appendix, *post*.)

The consent of the highway commissioners is an essential prerequisite to the right to maintain a proceeding for taking a highway for railway purposes. (*Matter of Rochester Railway Co.*, 123 N. Y. 351.)

A railroad crossing a highway. (Railroad Law, §§ 4, 11, 20, Appendix, *post*.)

Duty of a railroad company to maintain a highway at a crossing in a safe condition for public use. (*Lowell v. Railroad Co.*, 15 App. Div. 218; *Gale v. Railroad Co.*, 76 N. Y. 594; *Bryant v. Town of Randolph*, 133 N. Y. 77; *Schild v. Railroad Co.*, 133 N. Y. 446.)

As to highway crossing railroad, see § 90, *ante*; as to duties of railroads at crossings, § 157, *post*.

Elevated Railroads.

The erection of elevated railroad structures without the consent of the abutting owners is illegal; and an abutter may recover damages even though the premises are in the possession of tenants. (*Story v. N. Y. Elevated R. R. Co.*, 90 N. Y. 122; *Fobes v. Railroad Co.*, 121 N. Y. 505; *Kernochan v. N. Y. Elevated R. R. Co.*, 128 N. Y. 559; *Pappenheim v. Metropolitan Ry. Co.*, 128 N. Y. 436; *Kearney v. Metropolitan Ry. Co.*, 129 N. Y. 76; *Mortimer v. Manhattan Ry. Co.*, 129 N. Y. 81; *Bohm v. Metropolitan Ry. Co.*, 129 N. Y. 576; *Sterry v. N. Y. Elevated R. R. Co.*, 129 N. Y. 619; *Hughes v. Metropolitan Ry. Co.*, 130 N. Y. 14; *Hughes v. N. Y. Elevated R. R. Co.*, 40 St. Rep. 581; *Kane v. N. Y. Elevated R. R. Co.*, 125 N. Y. 164; *Thompson v. Manhattan Ry. Co.*, 130 N. Y. 360; *Moore v. N. Y. Elevated R. R. Co.*, 130 N. Y. 523; *Lahr v. Metropolitan Ry. Co.*, 104 N. Y. 269; *Drucker v. Manhattan Ry. Co.*, 106 N. Y. 157; *American Bank Note Co. v. N. Y. Elevated R. R. Co.*, 129 N. Y. 252; *Becker v. Metropolitan Ry. Co.*, 131 N. Y. 509; *Storck v. Metropolitan Ry. Co.*, 131 N. Y. 514; *Roberts v. N. Y. Elevated R. R. Co.*, 128 N. Y. 455; *McGean v. Metropolitan Ry. Co.*, 133 N. Y. 9; *Mitchell v. Metropolitan Ry. Co.*, 45 St. Rep. 318; *Pond v. Metropolitan Ry. Co.*, 112 N. Y. 186; *Ottinger v. N. Y. Elevated R. R. Co.*, 43 St. Rep. 817; *Slater v. Manhattan Ry. Co.*, 45 St. Rep. 153; *Sperb v. Metropolitan Ry. Co.*, 61 Hun, 539; *Adler v. Metropolitan Ry. Co.*, 46 St. Rep. 523; *Steimmetz v. Metropolitan Ry. Co.*, 18 Supp. 209; *Brush v. Manhattan Ry. Co.*, 13 Supp. 908; *Bischoff v. N. Y. Elevated R. R. Co.*, 46 St. Rep. 863; *Rush v. Manhattan Ry. Co.*, 44 St. Rep.

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111; *Gray v. Manhattan Ry. Co.*, 35 St. Rep. 32; *Jones v. N. Y. Elevated R. R. Co.*, 45 St. Rep. 667; *Smith v. N. Y. Elevated R. R. Co.*, 44 St. Rep. 875; *Rich v. Manhattan Ry. Co.*, 46 St. Rep. 673; *Bookman v. N. Y. Elevated R. R. Co.*, 137 N. Y. 302; *Cook v. N. Y. Elevated R. R. Co.*, 3 Misc. 248; *Mooney v. N. Y. Elevated R. R. Co.*, 3 Misc. 612; *White v. Manhattan Ry. Co.*, 139 N. Y. 19; *Bischoff v. N. Y. Elevated R. R. Co.*, 138 N. Y. 257.)

Street Railroads.

For statutory provisions, see Railroad Law, Article IV.

As to street surface railroad crossing track of steam railroad. (L. 1893, ch. 239, Appendix, *post.*)

The same rule applies to horse railroads as to those operated by steam. A new burden is imposed and there must be additional compensation to the owners of the fee. (*Craig v. Railroad Co.*, 39 N. Y. 404; *Wager v. Railroad Co.*, 25 N. Y. 526; *Ramsden v. Railway*, 1 Exch. 723; *Kellinger v. Railroad Co.*, 50 N. Y. 206.)

A street railroad company is bound to lay its tracks in a proper manner and keep them in repair. (*Fash v. Railroad Co.*, 1 Daly, 148; *Worster v. Railroad Co.*, 50 N.Y. 203; *Mayor v. Railroad Co.*, 3 Lans. 270.)

Telegraph and Telephone Lines.

For statutory provisions as to construction of telegraph and telephone lines, see Transportation Corporations Law, § 102; see, also, the series of American Electrical Cases.

As to the right to erect poles for telephone wires in city streets under § 102 of the Transportation Corporations Law, see *City of Utica v. Utica Telephone Company*, 24 App. Div. 361.

Neither the state nor any corporation can appropriate any portion of a rural highway by setting up poles for the support of telegraph or telephone wires. (*Eelsy v. American T. & T. Co.*, 143 N. Y. 133; *Blashfield v. Tel. & Tel. Co.*, 18 Supp. 250, and cases cited; s. c., 71 Hun, 532.)

The right of a telephone company to string its wires along a street is subordinate to that of a street railroad company to operate its road thereon, and the latter cannot be enjoined from using an electric wire in such street to propel its cars, although there is an interference with the electric current of the former company. (*Hudson River Telephone Co. v. Watervliet Ry. Co.*, 135 N. Y. 393, and cases cited.)

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Electric Light Companies.

As to use of highway by electric light company, see Transportation Corporations Law, § 61; see, also, American Electrical Cases

An electric company cannot erect poles on a country highway without the consent of the abutting owners. (*Palmer v. Larchmont Electric Co.*, 6 App. Div. 12.)

Pipes.

See § 14, *ante*, as to drainage, sewer and water pipes in highways.

See Transportation Corporations Law, §§ 33, 43, 45, 61, 80, 82, Appendix, *post*, for statutory provisions as to the use of highways by various pipe line corporations.

See Village Law, § 226, Appendix, *post*, as to the laying of water pipes in highways outside of villages.

See L. 1897, ch. 317, Appendix, *post*, as to laying of pipes in highways for heating purposes.

A gas company has no authority to lay its pipes in a country highway without the consent of the abutting owners. (*Gaslight Co. v. Calkins*, 62 N. Y. 386.)

Water pipes may be laid in a village street without compensation. (*Whitcher v. Water Works Co.*, 66 Hun, 619; s. c., 142 N. Y. 626.)

Sewers may not be laid in highways without the consent of the abutting owners. (*Van Brundt v. Town of Flatbush*, 128 N. Y. 50.)

Turnpike Corporations.

For statutory provisions, see Transportation Corporations Law, §§ 120-151, Appendix, *post*.

A turnpike or plank road company which has acquired the right to use a public highway for the construction and location of its road stands in the place of the town highway commissioners and is subject to all their duties and liabilities to the public. (*Benedict v. Goit*, 3 Barb. 459; *Dexter v. Broat*, 16 Barb. 337; *Ireland v. Plank Road Co.*, 13 N. Y. 526.)

Ferries.

It is not an extra burden upon a highway for the public to land thereon from a ferry. (*Fowler v. Mott*, 19 Barb. 204; *Peters v. Kendal*, 6 Barn. & Cress. 703.)

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Extra Viam.

The right of the public to pass along a highway extends also to uninclosed lands adjacent thereto (*Cleveland v. Cleveland*, 12 Wend. 172), and to any lands adjacent to a highway that has become impassable. (*Williams v. Safford*, 7 Barb. 309.) But the impassable highway must be a public, not a private way. (*Bullard v. Harrison*, 4 M. & S. 387.) And the public must travel as near the highway and use as little of the adjacent land as possible. (*White v. Wiley*, 36 St. Rep. 102.)

Miscellaneous Rights and Uses.

See notes under § 157, *post*, as to the law of the road and of crossings, and § 163, *post*, as to the free use of highways by all persons and vehicles.

See Railroad Law, § 53, as to the right to walk upon railroad tracks.

See Indian Law, §§ 15, 26, as to freedom of Indians from paying toll.

See L. 1897, ch. 483, Appendix, *post*, as to passage of timber and logs over rivers.

All the land within a highway fence is not necessarily subject to the right of way and may be occupied by the owner. (*Harlow v. Humiston*, 6 Cow. 189.)

The public have a right of way over every stream capable of transporting property. (*Morgan v. King*, 35 N. Y. 454.)

The public have a right to use the tracks of a horse railroad for travel with horses and wagons. (*Fettrich v. Dickenson*, 22 How. 248.) But one driving on the tracks is bound to use greater care than on the rest of the road as the company has the right of way for its cars. (*Wilbrand v. Railroad Co.*, 3 Bos. 314; *Hegan v. Railroad Co.*, 15 N. Y. 380; *Whitaker v. Railroad Co.*, 51 N. Y. 295.)

Discussion as to rate of speed at which trains may pass over country highways. (*Hunt v. Fitchburg R. R. Co.*, 22 App. Div. 212.)

The regulation of the rate of speed of cars in streets and highways cannot be the subject of contract either by legislature or common council. (*Brooklyn v. Nassau R. R. Co.*, 20 App. Div. 31.)

See *Westlake v. Koch*, 45 St. Rep. 481; *Nicoll v. Sands*, 131 N. Y. 19.

Penal Code Provisions.

§ 275. DEFINITION OF THE OFFENSE.—The following acts, or any of them, except as permitted by chapter four hundred and seventy-nine of the laws of eighteen hundred and eighty-seven or the acts amendatory thereof, constitute a disturbance of a religious meeting:

Fences to be removed.

3. Obstructing in any manner without authority of law, within the like distance, free passage along a highway to the place of such meeting. ("The like distance" is two miles.)

§ 666. RUNNING HORSES ON HIGHWAY, A MISDEMEANOR.—A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes, or permits them to run, is guilty of a misdemeanor.

§ 674d. UNLAWFULLY EXACTING TOLL OF A MEMBER OF THE NATIONAL GUARD.—Any person, master or keeper of a toll-gate, toll-bridge or ferry, or any person in charge thereof who wilfully hinders or delays any member of the national guard or refuses free passage to any such member going to or returning from any parade, encampment, drill or meeting which he may be by law required to attend, or wilfully hinders, delays or refuses free passage to any conveyance or military property of the state in charge of a member of said guard, is guilty of a misdemeanor.

Military Code Provision.

§ 148. EXEMPTION OF MEMBERS OF NATIONAL GUARD FROM ARREST ; RIGHT OF WAY ; FREE PASSAGE OF TOLL-GATES, BRIDGES AND FERRIES.—No person belonging to the military forces of this state shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty. Any portion of the national guard and militia parading, or performing any duty, according to law, shall have the right of way in any street or highway through which they may pass, provided the carriage of United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments, shall not be interfered with thereby. Any person belonging to the military forces of the state, going to or returning from any parade, encampment, drill or meeting which he may be required by law to attend, shall, together with his conveyance and the military property of the state, be allowed to pass free through all toll-gates and over all toll-bridges and ferries.

§ 101. **Fences to be removed.**—Whenever a highway shall have been laid out through any inclosed, cultivated or improved lands, in conformity to the provisions of this chapter, the commissioners of highways shall give to

Penalty for falling trees.

the owner or occupant of the land through which such highway shall have been laid, sixty days' notice in writing to remove his fences; if such owner shall not remove his fences within the sixty days, the commissioners shall cause them to be removed, and shall direct the highway to be opened and worked.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 96.

See notes under §§ 104, 105, *post*, as to the removal of fences as encroachments; village trustees as fence viewers, Village Law, § 88, sub. 14.

See *Drake v. Rogers*, 3 Hill, 608; *Wetmore v. Tracy*, 14 Wend. 250; *Case v. Thompson*, 6 Wend. 634; *Cooper v. Bean*, 5 Lans. 318.

§ 102. ***Penalty for falling trees.***—If any person shall cut down any tree on land not occupied by him, so that it shall fall into any highway, river or stream, unless by the order and consent of the occupant, the person so offending shall forfeit to such occupant, the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain in the highway, river or stream.

Revised from 1 R. S., ch. 16, tit. 1, art. 5, § 111.

§ 103. ***Fallen trees to be removed.***—If any tree shall fall, or be fallen by any person from any inclosed land into any highway, any person may give notice to the occupant of the land from which the tree shall have fallen, to remove the same within two days; if such tree shall not be removed within that time, but shall continue in the highway, the occupant of the land shall forfeit the sum of fifty cents for every day thereafter, until the tree shall be removed.

Revised from 1 R. S., ch. 16, tit. 1, art. 5, § 110.

§ 104. ***Penalty for obstruction or encroachment.***—Whoever shall obstruct or encroach upon any highway,

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or shall unlawfully fill up or place any obstruction in any ditch for draining the water from any highway, shall forfeit for every such offense the sum of five dollars.

Revised from 1 R. S., ch. 16, tit. 1, art. 5, § 102.

See notes under next section.

See § 153, *post*, as to damages for injuries to highways; § 164, *post*, as to recovery of penalties not specially provided for.

The owner of land abutting upon a public street is permitted to encroach on the primary right of the public to a limited extent and for a temporary purpose, owing to the necessity of the case. Two facts, however, must exist to render the encroachment lawful; the obstruction must be reasonably necessary for the transaction of business; it must not unreasonably interfere with the rights of the public. (*Welch v. Wilson*, 101 N. Y. 254; *Callanan v. Gilman*, 107 N. Y. 360; *Flynn v. Taylor*, 127 N. Y. 596.)

As to what is a reasonable use of or encroachment upon a street. (*Flynn v. Taylor*, 127 N. Y. 596.)

It seems to be the settled law that the long continuance of an encroachment, although for more than twenty years, cannot destroy the public right or take away the authority of the public officers to remove and abate it. (*Orphan Asylum v. City of Troy*, 76 N. Y. 108; *Walker v. Caywood*, 31 N. Y. 51; *Mills v. Hall*, 9 Wend. 315; *Milhau v. Sharp*, 27 N. Y. 611; *Driggs v. Phillips*, 103 N. Y. 77; *Bliss v. Johnson*, 94 N. Y. 235.)

Contra, Peckham v. Anderson, 27 Barb. 207.

An obstruction placed in a *private* road cannot be removed by the highway commissioners. (*Drake v. Rogers*, 3 Hill, 604.)

An owner of land has no right to obstruct a public highway because damages for taking the same had not been paid him. (*Chapman v. Gates*, 54 N. Y. 132.)

Any permanent or habitual obstruction in a public highway is an indictable nuisance, although there be room enough left for carriages to pass. (*Davis v. Mayor*, 14 N. Y. 524.)

There is no provision in the statute which authorizes the commissioners of highways of two towns to unite as plaintiffs and bring an action to recover the penalty or forfeiture for an encroachment upon a highway. The authority of such officers to maintain actions is given by statute, and

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is confined to those of the town where the offense has been committed. (*Bradley v. Blair*, 17 Barb. 480.)

It is not necessary under this section to give a defendant notice of the obstruction, specifying the extent and location thereof, and direct him to remove the same within sixty days, before an action can be brought to recover the penalty prescribed. (*Town of Corning v. Mead*, 86 Hun, 12.)

It is a good answer to a suit brought to recover the penalty prescribed by this section in justice's court to plead title to the land and deny that the place is a highway. (*Little v. Denn*, 34 N. Y. 452; *Sage v. Barnes*, 9 Johns. 365; *Fleet v. Youngs*, 7 Wend. 291.)

In an action for injuries resulting from the obstruction of a street, the question of defendant's negligence is immaterial. (*Manger v. Harrison*, 14 W. D. 201.)

Where an obstruction was placed in a ditch draining a highway by the owner of adjoining land who was being injured by the flow of water from the ditch, such injury was properly set up as a defence in an action for penalty under this section. (*Thompson v. Allen*, 7 Lans. 459.)

It is the duty of municipal authorities to keep the streets and sidewalks open and unobstructed. (*Railroad Co. v. Utica*, 3 Alb. L. J. 151; *Lavery v. Hannigan*, 20 J. & S. 463.)

As to whether municipal authorities may legalize the obstruction of a public highway. (*Railroad v. Utica*, 3 Alb. L. J. 151; *Lavery v. Hannigan*, 20 J. & S. 463; *Farrell v. New York*, 22 St. Rep. 469; *McCaffrey v. Smith*, 41 Hun, 117; *Hoey v. Gilroy*, 129 N. Y. 132; *People v. Fowler*, 43 St. Rep. 415.)

Village authorities have no right to authorize the using of a highway for a hack-stand without the consent of the adjoining owner. (*McCaffrey v. Smith*, 41 Hun, 117.)

Village trustees may authorize the erection of a work of art in a public highway. (*Tompkins v. Hodgson*, 2 Hun, 146.)

A common council of a city have no right to license a citizen to enclose a part of a public street, and such an inclosing is an encroachment. The only way that such a permission may be given is by statutory proceedings to alter or diminish the width of the street. (*Orphan Asylum v. City of Troy*, 76 N. Y. 108.)

An individual or municipal corporation who maintains an obstruction in a highway in the nature of an excavation is liable for any damage thereby sustained. (*Bliss v. Schaub*, 48 Barb. 339; *Dygert v. Schenck*, 23

Obstructing sidewalks in cities and villages.

Wend. 446; *Johnson v. Friel*, 50 N. Y. 679; *McCamus v. Gaslight Co.*, 40 Barb. 380; *Osborne v. Union Ferry Co.*, 53 Barb. 629; *Scott v. Hough*, 14 St. Rep. 401; *Flynn v. Railroad Co.*, 17 J. & S. 60; *Port Jervis v. National Bank*, 90 N. Y. 550; *Peard v. Karst*, 32 St. Rep. 159; *Clarke v. Crimmins*, 32 St. Rep. 978; *Smith v. Town of Clarkstown*, 69 Hun, 155; *Greenberg v. Kingston*, 22 Supp. 511; *Beck v. Carter*, 68 N. Y. 283.)

The liability of one who placed a stone heap along a highway from which an accident resulted. (*Houghtaling v. Shelley*, 51 Hun, 598.)

The liability of one who left steam boilers lying in the street. (*Stewart v. Porter Mfg. Co.*, 13 St. Rep. 220.)

The liability of one who obstructs a highway by placing logs thereon. (*McDermott v. Conley*, 33 St. Rep. 560.)

The liability of one who built a toboggan slide across a city street. (*Haden v. Clarke*, 32 St. Rep. 478.)

See *People v. Horton*, 64 N. Y. 610, as to what is not an obstruction of a canal by a floating elevator.

See *Trustees of Jordan v. Otis*, 37 Barb. 50; *Dygert v. Schenck*, 23 Wend. 446; *Cooper v. Bean*, 5 Lans. 318; *Friedlander v. D. & H. C. Co.*, 34 St. Rep. 650.

OBSTRUCTING SIDEWALKS IN CITIES AND VILLAGES.

A pedestrian may not stop in front of a person's house and use abusive language towards such person; he becomes a trespasser thereby. (*Adams v. Rivers*, 11 Barb. 390.)

As to the obstruction of a sidewalk by the use of skids or platforms leading to a wagon or by the vehicles themselves for the purpose of loading and unloading merchandise. (*Hand v. Klinker*, 7 St. Rep. 21; *Fisher v. Cambridge*, 51 Hun, 296; *Flynn v. Taylor*, 53 Hun, 167; *Flynn v. Taylor*, 127 N. Y. 596; *Callanan v. Gilman*, 107 N. Y. 360; *Richardson, &c. Co. v. Barstow Stove Co.*, 36 St. Rep. 983.)

One who obstructs a sidewalk for his private ends and fails to restore it to a safe condition is liable for an injury sustained thereby. (*Smith v. Ryan*, 29 St. Rep. 672.)

In an action for negligence for obstructing a sidewalk evidence as to the nature and appearance of such obstruction a few hours after the accident is admissible. (*Ford v. Nichols*, 36 St. Rep. 729.)

As to the liability of one who tilted a heavy counter up against his

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house and allowed it to remain for several days when an accident occurred from its fall. (*King v. Troy*, 21 W. D. 558.)

Awnings as obstructions. (*Farrell v. New York*, 20 St. Rep. 12; *Hoey v. Gilroy*, 41 St. Rep. 181; *Lavery v. Hannigan*, 20 J. & S. 463; *Brinkman v. Eisler*, 40 St. Rep. 865.)

Basement entrances as obstructions. (*Williams v. Hynes*, 23 J. & S. 86.)

Coal holes as obstructions. (*Jennings v. Van Schaick*, 108 N. Y. 530; *Wells v. Sibley*, 31 St. Rep. 40.)

Show cases as obstructions. (*People v. New York*, 18 Abb. N. C. 123.)

Storm doors as obstructions. (*Kiernan v. Newton*, 20 Abb. N. C. 398.)

Signs as obstructions. (*New York v. Wood*, 15 Daly, 341.)

§ 105. *How removed and liability for not removing.*—The commissioners of highways shall serve upon the owner or occupant of lands adjoining that part of a highway within their town, in which any obstruction or encroachment may exist, a notice specifying the extent and location of such obstruction or encroachment, and directing such owner or occupant to remove the same within a specified time, not more than sixty days after the service of the notice. If such owner or occupant shall neglect or refuse to remove such obstruction or encroachment within such time, he shall forfeit to the town the sum of twenty-five dollars; and the commissioners may remove such obstructions or encroachments at the expense of the town, which may be recovered by action, of such owner or occupant; or the said commissioners may bring an action in any court of competent jurisdiction, to compel such owner or occupant to remove such obstruction or encroachment. Actions by commissioners of highways, as in this section provided, shall be in the name of the town.

Revised from 1 R. S., ch. 16, tit. 1, art. 5, §§ 103-108, as amended by L. 1840, ch. 300, and by L. 1878, ch. 245.

How removed and penalty for not removing.

See § 15, *ante*, as to actions by commissioners for injuries to highways, and § 164, *post*, as to actions to recover penalties.

See notes under § 104, *ante*.

See notes under § 16, *ante*, as to liability of towns for defective highways.

The scope of this provision of the highway law considered. (*Town of Weekfield v. Shasley*, 23 Misc. 100.)

The highways of the state are made for and devoted to public travel, and the whole public have the right to their use in their entirety, and when obstructions to public travel are found within their bounds, the commissioners of highways are clothed with power to remove them without waiting for the slow process of law, even though travel be not absolutely and entirely prevented. (*Van Wyck v. Lent*, 33 Hun, 301; *Cook v. Harris*, 61 N. Y. 448; *Wetmore v. Tracy*, 14 Wend. 250; *Hathaway v. Jenks*, 67 Hun, 289.)

Commissioners of highways have no remedy in equity, by mandamus or injunction, to remove encroachments from a highway. (*Rozell v. Andrews*, 103 N. Y. 150.)

The commissioners of highways may summarily remove from a highway a building as an obstruction to public travel. (*Cook v. Harris*, 61 N. Y. 448; *Driggs v. Phillips*, 103 N. Y. 77.)

Obstructions in a ditch at the side of a highway may be summarily removed when they cause the overflowing of the road. (*Dominick v. Hill*, 6 St. Rep. 329.)

The old statute referred only to the removal of encroaching fences. (*Cook v. Covil*, 18 Hun, 288.) It provided also for a trial by jury of the question of encroachment. (*Commissioners v. Van Allen*, 32 Hun, 61; *Briggs v. Doughty*, 7 Hun, 82; *Bronson v. Mann*, 13 Johns. 460; *Mott v. Commissioners*, 2 Hill, 472; *Voorhees v. Martin*, 12 Barb. 508; *Robbins v. Gorham*, 26 Barb. 586.)

The commissioners should all meet and deliberate together on the subject of the alleged encroachment; and then, if they, or a majority of them, should deem it necessary, they are to order the obstruction removed. (*Spicer v. Slade*, 9 Johns. 359; *Bronson v. Mann*, 13 Johns. 460.)

Under the old statute any two commissioners might order the removal of an encroachment provided all were notified to be present at a meeting to consider such removal. (*Phillips v. Schumacher*, 10 Hun, 405; *Fitch v.*

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Commissioners, 22 Wend. 132; *People v. Williams*, 36 N. Y. 441; *Christy v. Newton*, 60 Barb. 332.)

The order of the commissioners of highways is not final and conclusive. (*Borries v. Horton*, 16 Hun, 139.)

Commissioners are not confined to the statutory remedy in removing encroachments, and may give a mere informal notice. (*Kline v. Hibbard*, 80 Hun, 50.)

The purpose of the notice is to inform the one served of the particulars of the encroachment. (*Town of Sardinia v. Butler*, 78 Hun, 527; *Spicer v. Slade*, 9 Johns. 359; *Briggs v. Doughty*, 7 Hun, 82; *Fitch v. Commissioners*, 22 Wend. 132.)

Formerly it was necessary to state in the notice the breadth the highway was originally intended to have. (*Cook v. Covil*, 18 Hun, 288; *Spicer v. Slade*, 9 Johns. 359; *Mott v. Commissioners*, 2 Hill, 472.)

As to what is a sufficient description of an encroachment, in order that the notice may comply with the statute. (*Town of Sardinia v. Butler*, 78 Hun, 527; *Spicer v. Slade*, 9 Johns. 359; *Mott v. Commissioners*, 2 Hill, 472; *Kerr v. Hammer*, 39 St. Rep. 708.)

Where an order complying with the statutory requirements is annexed to the notice, it supplements the notice and should be deemed a part thereof. Both need not contain a description of the encroachment. (*James v. Sammis*, 132 N. Y. 239; *Oeldorf v. Sullivan*, 36 St. Rep. 74.)

It is a question whether the sufficiency of the notice to remove an encroachment can be attacked in an action against the highway commissioners for trespass. (*Hathaway v. Jenks*, 67 Hun, 289.)

Notice must be given independent of whether the road was established by alteration or originally laid out by the commissioners. (*Case v. Thompson*, 6 Wend. 634.)

Actual notice must be shown. It will not be presumed. (*Case v. Thompson*, 6 Wend. 634.)

It is not necessary that one who has been ordered to remove an encroachment deny the existence of such to the commissioners. (*Borries v. Horton*, 16 Hun, 139.)

But see *Lane v. Cary*, 19 Barb. 537.

An action of trespass will not lie against a highway commissioner for removing an encroachment after notice. (*Hathaway v. Jenks*, 67 Hun, 289.)

An owner of a house who has been ordered to remove it as an obstruc-

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tion to a public highway, may, upon proof that it does not encroach, maintain an action to restrain interference therewith. (*Flood v. Van Wormer*, 147 N. Y. 284.)

Where a fence has been properly found to be an encroachment upon the highway, an injunction will not lie to restrain its removal. (*Hyatt v. Bates*, 40 N. Y. 164.)

Where a highway commissioner has ordered a building to be removed as an encroachment, an injunction may issue against him. (*Flood v. Van Wormer*, 70 Hun, 415.)

The penalty for encroachment should be recovered by suit and not by a summary proceeding. (*Rue v. Sprague*, 1 Johns. 510.)

Commissioners of highways cannot maintain a suit in their official names or titles; but must use their individual names, annexing their official titles. (*Supervisor of Galway v. Stimson*, 4 Hill, 136; *Commissioners v. Peck*, 5 Hill, 215; *Overseers v. Overseers*, 18 Johns. 407; *Todd v. Birdsall*, 1 Cow. 260; *Gould v. Glass*, 19 Barb. 179.)

But when actions are thus brought, the pleading should, by proper averments, show that the claim is made by the officer, and not by the individual. (*Gould v. Glass*, 19 Barb. 179.)

The highway commissioners of two towns cannot sue jointly for a penalty for an encroachment upon a highway which forms the boundary between the towns. (*Bradley v. Blair*, 17 Barb. 480.)

Commissioners of highways are authorized to prosecute for the recovery of penalties for encroachments on highways; and are, of course, competent to adjust controversies in relation to such encroachments by amicable settlement. If, in so doing, they deem it advisable, in the exercise of a sound discretion, to take security for the payment of money at a further day, there can be no reasonable objection to such an arrangement. (*Commissioners v. Peck*, 5 Hill, 215.)

Special damages must be alleged and proven in an action for obstructing a public highway. (*Lansing v. Wiswall*, 5 Den. 213.)

Commissioners may employ counsel in their legal proceedings. (*Duntz v. Duntz*, 44 Barb. 459.)

As to whether the defendant in an action for the penalty for obstructing a highway may interpose a plea of title. (*Sage v. Barnes*, 9 Johns. 365; *Parker v. Van Houten*, 7 Wend. 145; *Fleet v. Youngs*, 7 Wend. 291; *Saunders v. Townsend*, 26 Hun, 308.)

As to whether an appeal will lie to the county court in proceedings by

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commissioners to remove encroachments. (*Commissioners v. Van Allen*, 32 Hun, 61.)

The proceeding herein provided for the removal of encroachments is applicable to all highways, including a highway by user; and the remedy is available although it did not exist at the time of the encroachment. (*James v. Sammis*, 132 N. Y. 239; *Town of Sardinia v. Butler*, 78 Hun, 527; *Town of Corning v. Head*, 86 Hun, 12; *People v. Hunting*, 39 Hun, 452; *Alpaugh v. Bennett*, 59 Hun, 45; *Baylis v. Roe*, 5 Supp. 279; *Fowler v. Mott*, 19 Barb. 204.)

Contra: Doughty v. Brill, 36 Barb. 488; *Christy v. Newton*, 60 Barb. 332.

An obstruction placed in a private road cannot be removed by the highway commissioners. (*Drake v. Rogers*, 3 Hill, 604.)

Although a plank road has been located thereon, yet the local authorities still have jurisdiction to remove obstructions from a highway. (*Walker v. Caywood*, 31 N. Y. 51.)

A highway used by the public for many years and thereafter used as a plank road was held to be a public highway only to the extent of its public use, and a structure not upon the land actually so used was not an encroachment. (*Flood v. Van Wormer*, 70 Hun, 415.)

The penalty for encroachment cannot be recovered unless the highway has been properly described and bounded as required by law; whether or not this has been done is a question not for the jury but for the commissioners of highways. (*Talmage v. Huntting*, 29 N. Y. 447.)

Commissioners may not remove a fence as an encroachment unless the road has been properly laid out and recorded under the highway law. (*Marvin v. Pardee*, 64 Barb. 353.)

Where a road was closed by resolution of municipal authorities, no action could lie to recover a penalty for encroachment. (*Bisbee v. Mansfield*, 6 Johns. 84.)

An order of a highway commissioner directing the removal of a building encroaching upon a highway, being recorded in the office of the town clerk is a cloud upon the title of the owner of such building and the land on which it stands. (*Flood v. Van Wormer*, 70 Hun, 415.)

Shade trees lawfully planted by the owner of the fee in the highway dedicated by him to the public and which did not encroach upon that part of the highway used by the public for thirty years, are not an encroachment under this section and may not be removed in an action brought by

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the highway commissioners. (*Town of Weekfield v. Shasley*, 23 Misc. 100.)

Where the owner of the fee in a public highway builds a race-way across the road, he must restore the road to proper condition or be liable in damages for any injury sustained thereby. (*Dygert v. Schenck*, 23 Wend. 451.)

Where a plank road corporation has taken a public highway it succeeds to the rights and duties of the town commissioners of highways; although, therefore, in making proper and reasonable repairs, a citizen may suffer expense or inconvenience, the corporation is not liable in damages. (*Benedict v. Goit*, 3 Barb. 459; *Graves v. Otis*, 2 Hill, 466.)

Overseers may not remove fences without an order from the commissioner and without the sixty days' notice, even if the road be already laid out. (*Kelley v. Horton and Smith*, 2 Cow. 424; *contra, McFadden v. Kingsbury*, 11 Wend. 667.)

The remedy here given for the removal of encroachments does not abrogate the common law remedy of abatement of nuisances by individuals or abolish the proceeding by indictment. (*Wetmore v. Tracy*, 14 Wend. 250.) But a private individual cannot remove an encroachment unless it interferes with the use of the road by the public. (*Harrower v. Ritson*, 37 Barb. 301.)

An obstruction of a highway is a public nuisance and the individual who has sustained a private injury therefrom may maintain an action to abate it and recover special damages. (*Wakeman v. Wilbur*, 147 N. Y. 657.)

A land owner may remove an obstruction from a highway where it amounts to a nuisance. (*Griffith v. McCullum*, 46 Barb. 561; *Jennings v. Bates*, 26 W. D. 33.)

An abutting owner will be granted an injunction to prevent the obstruction of a highway. (*Newman v. Nellis*, 97 N. Y. 285; *Purroy v. Schuyler*, 15 St. Rep. 337.)

An owner of land may remove shade trees in front of his premises. (*Lancaster v. Richardson*, 4 Lans. 156.)

As to whom the timber, obtained from cutting trees standing on the street, belongs. (*Bridge Co. v. Bachman*, 66 N. Y. 261.)

The trustees of a village may, as highway commissioners, order the removal of a sidewalk which encroaches upon the highway. (*Moore v. Village of Fairport*, 11 Misc. 146.)

 Private road.

Who may remove obstructions in the city of New York. (*Metropolitan Exhibition Co. v. Newton*, 21 St. Rep. 73; *Naylo v. Glazier*, 5 Duer, 161.)

Power of trustees of village of Fairport to order obstructions to sidewalks and streets removed. (*Moore v. Fairport*, 11 Misc. 146.)

See *Fleet v. Youngs*, 7 Wend. 291; *Pugsley v. Anderson*, 3 Wend. 468; *James v. Sammis*, 31 St. Rep. 192; *Freidlander v. D. & H. C. Co.*, 34 St. Rep. 650; *People v. Hunting*, 39 Hun, 452; *Sage v. Barnes*, 9 Johns. 365; *Strickland v. Woodworth*, 3 S. C. 286; *Etz v. Daily*, 20 Barb. 32; *Railroad Co. v. Railroad Co.*, 67 Barb. 315; *Coykendall v. Durkee*, 13 Hun, 260; *Paine v. East*, 15 W. D. 281; *New York v. Heuft*, 2 How. Pr. (N. S.) 149; *Ketchum v. Edwards*, 6 App. Div. 160.

§ 106. *Private road.*—An application for a private road shall be made in writing to the commissioners of highways of the town in which it is to be located, specifying its width and location, courses and distances, and the names of the owners and occupants of the land through which it is proposed* be laid out.

*(R. S. pp. 1379, 1383; *post*, pp. 882-893.)

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 77, and from L. 1853, ch. 174, § 1.

See Constitution, Art. 1, § 7, Appendix, *post*, as to opening private roads.

In the light of the Constitution, if not that of a law which lies at the foundation of all governments, this statute must be read with the proviso that the owner consent.

Such consent need not be in writing but may be oral. The bringing of an action for the damages assessed is the clearest manifestation of consent. (*Baker v. Braman*, 6 Hill, 47; *Taylor v. Porter*, 4 Hill, 140.)

As to what evidence would show a road to be a private and not a public highway. (*Drake v. Rogers*, 3 Hill, 604.)

As to what the application should contain. (*People v. Taylor*, 34 Barb. 481.)

As to the sufficiency of the description of the proposed private road,

* So in the original.

Jury to determine necessity, &c.

where it refers to an old road or a private way used for a number of years but never legally laid out. (*Satterly v. Winne*, 101 N. Y. 218.)

A private road cannot be laid out across the inclined plane of a railroad. (*Railroad Co. v. Artcher*, 6 Paige, 83.)

An obstruction placed in a private road by the owner of the land over which it is laid out, cannot be lawfully removed by one having no right to use the road. (*Drake v. Rogers*, 3 Hill, 604.)

See *O'Rourke v. Hart*, 9 Bos. 301.

§ 107. *Jury to determine necessity and assess damages.*—One or more of the commissioners to whom the application shall be made, shall appoint as early a day as the convenience of the parties interested will allow, when, at a place designated in the town, a jury will be selected for the purpose of determining upon the necessity of such road, and to assess the damages by reason of the opening thereof.

Revised from L. 1853, ch. 174, § 2.

§ 108. *Copy application and notice delivered to applicant.*—Such commissioners shall deliver to the applicant a copy of the application to which shall be added a notice of the time and place appointed for the selection of the jury, addressed to the owners and occupants of the land.

Revised from L. 1853, ch. 174, § 3.

§ 109. *Copy and notice to be served.*—The applicant on receiving the copy and notice shall, on the same day, or the next day thereafter, excluding Sunday and holidays, cause such copy and notice to be served upon the persons to whom it is addressed, by delivering to each of them who reside in the same town a copy thereof, or in case of his absence, by leaving the same at his residence, and

List of jurors.

upon such as reside elsewhere, by depositing in the post-office a copy thereof to each, properly inclosed in an envelope, addressed to them respectively at their post-office address, and paying the postage thereon, or, in case of infant owners, by like service upon their parent or guardian.

Revised from L. 1853, ch. 174, § 4.

The land-owner must be served with a written notice; but he may waive it by appearing. (*Railroad Co. v. Artcher*, 6 Paige, 83.)

§ 110. *List of jurors.*—At such time and place, on due proof of the service of the notice, one or more of the commissioners shall present a list of the names of eighteen resident freeholders of the town, in no wise of kin to the applicant, owner or occupant, or either of them, and not interested in such lands.

Revised from L. 1853, ch. 174, § 5, as amended by L. 1859, ch. 373, and L. 1860, ch. 468.

§ 111. *Names struck off.*—The owners or occupants of the land, may strike from the list not more than six names, and the applicant a like number; and of the number which remain, the six names standing first upon the list shall be the jury.

Revised from L. 1853, ch. 174, § 6.

§ 112. *Place of meeting.*—The commissioner or commissioners present, shall then appoint some convenient time and place for the jury to meet, and shall summon them accordingly.

Revised from L. 1853, ch. 174, § 7.

The commissioners have no right to delegate the summoning of the jurors, but such summons will not be held invalid if the owner of the land

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proposed to be taken is present at the meeting of the jury and does not object to the proceeding. (*People v. Commissioners of Greenbush*, 24 Wend. 367.)

§ 113. *Jury to determine and assess damages.*—At least one commissioner and all the persons named and summoned on such jury, shall meet at the time and place appointed; but if one or more of the six jurors shall not appear, the commissioner or commissioners present shall summon so many qualified to serve as such jurors as will be sufficient to make the number present six, to forthwith appear and act as such; and when six shall have so appeared, they shall constitute the jury, and shall be sworn well and truly to determine as to the necessity of the road, and to assess the damages by reason of the opening thereof.

Revised from L. 1853, ch. 174, §§ 8, 9.

It is necessary to take an objection to any of the jurors that they are not freeholders or they will be deemed to be such. (*People v. Taylor*, 34 Barb. 481.)

§ 114. *Their verdict.*—The jury shall view the premises, hear the allegations of the parties, and such witnesses as they may produce, and if they shall determine that the proposed road is necessary, they shall assess the damages to the person or persons through whose land it is to pass, and deliver their verdict in writing to the commissioners.

Revised from L. 1853, ch. 174, § 10, and from 1 R. S., ch. 16, tit. 1, art. 4, § 78.

As to what is sufficient evidence in the record of the breadth of the road. (*Herrick v. Stover*, 5 Wend. 580.)

An assessment of damages on the laying out a private road is not subject

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to the revision or correction of a board of supervisors. (*Craig v. Supervisors*, 10 Wend. 585.)

See *People v. Commissioners*, 24 Wend. 367; *Taylor v. Porter*, 4 Hill, 142.

§ 115. *Value of highway discontinued.*—If the necessity of such private road has been occasioned by the alteration or discontinuance of a public highway running through the lands belonging to a person through whose lands the private road is proposed to be opened, the jury shall take into consideration the value of the highway so discontinued, and the benefit resulting to the person by reason of such discontinuance, and shall deduct the same from the damages assessed for the opening and laying out of such private road.

Revised from L. 1853, ch. 174, § 11.

§ 116. *Papers to be recorded in the town clerk's office.*—The commissioners shall annex to such verdict the application, and their certificate that the road is laid out, and the same shall be filed and recorded in the town clerk's office.

Revised from L. 1853, ch. 174, § 12.

The order of the commissioners laying out the highway after the decision of the jury, is sufficient if it refers to the description of the road contained in the application. (*Satterly v. Winne*, 101 N. Y. 218.)

See *People v. Robinson*, 29 Barb. 80.

§ 117. *Damages to be paid before opening the road.*—The damages assessed by the jury shall be paid by the party for whose benefit the road is laid out, before the road is opened or used; but if the jury shall certify that the necessity of such private road was occasioned by the

Fees of officers.

alteration or discontinuance of a public highway, such damages shall be paid by the town, and refunded to the applicant.

Revised from L. 1853, ch. 174, § 14.

§ 118. **Fees of officers.**—Every juror, in proceedings for a private road, shall be entitled to receive for his services one dollar and fifty cents; and commissioners, of highways, their per diem compensation, to be paid by the applicant.

Revised from L. 1880, ch. 114, § 4.

§ 119. **Motion to confirm, vacate or modify.**—Within thirty days after the decision of the jury shall have been filed in the town clerk's office, the owner or occupant may apply to the county court of the county wherein such private road is situated, for an order confirming, vacating or modifying their decision; and such court may confirm, vacate or modify such decision as it shall deem just and legal. If the decision is vacated, the court may order another hearing of the matter before another jury, and remit the proceeding to the commissioners of highways of the same town for that purpose. If no such motion is made, the decision of the jury shall be deemed final. The motion shall be brought on, upon the service of papers on the adverse party in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein, and the decision of the county court shall be final, except that a new hearing may be had, as herein provided. If the final decision shall be adverse to the applicant, no other application for the same road shall be made within two years.

Revised from L. 1853, ch. 174, § 5, as amended by L. 1859, ch. 373, and L. 1860, ch. 468.

Costs of new hearing.

An order of the county court, affirming the decision of the jury, is not appealable. (*Matter of DeCamp*, 77 Hun, 478.)

Formerly no appeal would lie to the county judge from the decision of the jury. (*People v. Robinson*, 29 Barb. 77.) But otherwise under the act of 1860. (*West v. McGurn*, 43 Barb. 198.)

See *Craig v. Supervisors*, 10 Wend. 585.

§ 120. **Costs of new hearing.**—If upon a new hearing, the damages assessed are increased, the applicant shall pay the costs and expenses thereof, otherwise the owner shall pay the same.

New.

§ 121. **For what purpose private road to be used.**—Every such private road when so laid out, shall be for the use of such applicant, his heirs and assigns; but not to be converted to any other use or purpose than that of a road; nor shall the occupant or owner of the land through which said road shall be laid out, be permitted to use the same as a road, unless he shall have signified such intention to the jury who assessed the damages for laying out such road, and before such damages were assessed.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 79.

According to the true construction of the statute, a person on whose application a private road is laid out, has the sole and exclusive right to use it, unless the occupant of the land at the time when it is laid out signify his intention to make use of it. (*Lambert v. Hoke*, 14 Johns. 384.)

The penalty provided by statute for obstructing a highway is not applicable to a private road. (*Fowler v. Lansing*, 9 Johns. 349.)

As to the use of private roads laid out upon its own land by a corporation for its employees. (*People v. Moore*, 50 Hun, 356.)

The original owner of the land should so locate his fences as not to encroach upon the width of the road; but the new owner shall be deemed to have assented to such encroachment if he allows such fences to be so located without objection. (*Herrick v. Stover*, 5 Wend. 580.)

Highways or roads along division lines.

An obstruction placed in a private road by the owner of the land over which it is laid out, cannot be lawfully removed by one having no right to use the road. (*Drake v. Rogers*, 3 Hill, 604.)

See *Taylor v. Porter*, 4 Hill, 142.

§ 122. *Highways or roads along division lines.*—Whenever a highway or private road shall be laid along the division line between lands of two or more persons, and wholly upon one side of the line, and the land upon both sides is cultivated or improved, the persons owning or occupying the lands adjoining such highway or road, shall be paid for building and maintaining such additional fence as they may be required to build or maintain, by reason of the laying out and opening such highway or road; which damages shall be ascertained and determined in the same manner that other damages are ascertained and determined in the laying out of highways or private roads.

Revised from L. 1853, ch. 174, § 16.

§ 123. *Adjournments.*—If any accident shall prevent any of the proceedings required by this chapter relating to the laying out, altering or discontinuing of a highway, or the laying out a private road, to be done on the day assigned, the proceedings may be adjourned to some other day, and the commissioner shall publicly announce such adjournment.

Revised from L. 1853, ch. 174, § 13.

Bridges.

ARTICLE V.

BRIDGES.

SECTION 130. When town or county expense.

131. Additional county aid.
132. Statement of expenses.
133. Supervisors to levy tax.
134. Joint liabilities of towns, and their joint contracts.
135. Refusal to repair.
136. Proceedings in court.
137. Commissioners to institute proceedings.
138. Their duty.
139. Commissioners to report.
140. Appeals.
141. Power of court on appeal.
142. Refusal to repair bridge.
143. Penalty, and notice on bridge.
144. Offense.
145. Iron bridges.

SECTION 130. *When town or county expense.*—The towns of this state, except as otherwise herein provided, shall be liable to pay the expenses for the construction and repair of its public free bridges constructed over streams or other waters within their bounds, and their just and equitable share of such expenses when so constructed over streams or other waters upon their boundaries, except between the counties of Westchester and New York; and when such bridges are constructed over streams or other waters forming the boundary line of towns, either in the same or adjoining counties, such towns shall be jointly liable to pay such expenses. Each of the counties of this state shall also be liable to pay for the construc-

When town or county expense.

tion, care, maintenance, preservation and repair of public bridges, lawfully constructed over streams or other waters forming its boundary line, not less than one-sixth part of the expenses of such construction, care, maintenance, preservation and repair.

Revised from L. 1883, ch. 346. Amended by L. 1895, ch. 416.

See Constitution, art. 3, § 18, Appendix, *post*; § 145, *post*, as to iron bridges; County Law, § 60 ff. Appendix, *post*, as to liability of county; § 16, *ante*, as to liability of town in the matter of bridges; Canal Law, §§ 113-118, 176, Appendix, *post*, as to canal bridges; Transportation Corporations Law, §§ 120-151, Appendix, *post*, as to construction of bridges by corporations; Village Law, § 142, Appendix, *post*, as to care of bridges by village; L. 1897, ch. 269, Appendix, *post*, as to construction of bridges over waters between cities, towns or villages; see also L. 1893, ch. 419, Appendix, *post*.

In the absence of any other valid provision for the erection of a bridge, the commissioners of highways are charged with the power and duty to erect it. (*Berlin Iron Co. v. Wagner*, 57 Hun, 346.)

Commissioners of highways are not obliged to build bridges when they have no money in their hands for such purpose. (*People v. Hudson*, 7 Wend, 474; *Garlinghouse v. Jacobs*, 29 N. Y. 297; *Smith v. Wright*, 27 Barb. 621.)

The power given to a highway commissioner to repair highways includes the power to build a bridge to connect two parts of a highway. (*Mather v. Crawford*, 36 Barb. 564; *Huggans v. Riley*, 125 N. Y. 88.)

As to the power of highway commissioners to build a new bridge, where the old one has been destroyed, without waiting for action by the people at a town meeting. (*Boots v. Washburn*, 79 N. Y. 207; *Buyce v. Buyce*, 48 Hun, 433.)

Where a bridge had not been destroyed but was deemed insufficient by the highway commissioner, he was held to have no power even with the consent of the town board to erect a new one. (*Bridge Co. v. Barnett*, 1 St. Rep. 600; s. c., 12 St. Rep. 194.)

After a town board has given its consent to the erection or repair of a bridge, its powers and duties in relation thereto are at an end, and it may not give directions to the highway commissioners as to the manner of construction. (*People v. Town Board*, 92 Hun, 585.)

When town or county expense.

Where the town has authorized the construction of a bridge, any one highway commissioner may proceed to contract for its erection. (*Berlin Bridge Co. v. Wagner*, 57 Hun, 346.)

Where a town board by resolution authorizes a highway commissioner to repair bridges broken down since last town meeting, he may erect an iron bridge if he deems it best. (*People v. Smith*, 83 Hun, 432.)

Where an act required the highway commissioners to build a bridge "upon or near the site" of an old one, they had no power to change the location of the highway. (*People v. Finger*, 24 Barb. 341.)

It will not render the erection of a bridge illegal that when determined upon there was no highway leading to its site. (*People v. Meach*, 14 Abb. [N. S.] 429.)

As to the power of the supervisors to build bridges under the act of 1869. (*People v. Meach*, 14 Abb. [N. S.] 429; *Huggans v. Riley*, 125 N. Y. 88.)

Prior to the act of 1890 the burden of supporting the bridges within the towns was cast upon the towns alone. The counties could not be compelled to contribute toward such support. (*Town of Wirt v. Supervisors*, 90 Hun, 205.)

Before the repealing act of 1895 the towns could compel the counties to contribute in certain cases toward the expense of constructing and repairing bridges. After such repeal, however, such right was lost even though it had accrued prior to the passing of the repealing act. (*Town of Wirt v. Supervisors*, 90 Hun, 205; but see *Thacher v. Supervisors*, 21 Misc. 271.)

The board of supervisors of a county having within it two towns separated by a stream, may, upon the proper application of one of such towns, enact a law authorizing and compelling the erection of a bridge over said stream to connect highways in said towns, and impose taxes upon said towns to pay the expense thereof, though a majority of the taxpayers of one of such town and its officers are opposed to it, however such opposition may be indicated. (*People v. Supervisors*, 51 N. Y. 401; *People v. Flagg*, 46 N. Y. 401; *People v. McDonald*, 69 N. Y. 32; *Town of Kirkwood v. Newbury*, 122 N. Y. 571.)

Duty of counties under this section may be enforced by mandamus. (*People v. Supervisors*, 142 N. Y. 271.)

As to the power of the supervisors, under the County Law, to permit a town to issue bonds for the construction of a bridge. (*Barker v. Oswego*,

Additional county aid.

gatchie, 10 Supp. 834; 16 Supp. 727; *Berlin Bridge Co. v. Wagner*, 57 Hun, 346; County Law, § 12, subs. 6, 13, 14.)

A county is not liable at the suit of a private individual for personal injuries received from a defective bridge, though the county is chargeable with the maintenance thereof. (*Markey v. County of Queens*, 154 N. Y. 675; *Ensign v. Supervisors*, 25 Hun, 20.)

Bridges erected within the Indian reservation need not be repaired by the highway commissioner. (*Bishop v. Barton*, 64 N. Y. 637.)

When the approach to a bridge has been destroyed for over twenty-four years, the court will presume the highway thereover to have been abandoned and will not require the bridge to be rebuilt. (*Matter of Freeholders of Owasco*, 46 Hun, 620.)

L. 1892, ch. 493, not unconstitutional. (*Treanor v. Eichhorn*, 74 Hun, 58.)

See *People ex rel. Root v. Supervisors*, 146 N. Y. 107, 81 Hun, 216, construing the above section before its amendment in 1895.

See also *Town of Salamanca v. Cattaraugus Co.*, 81 Hun, 282; *People ex rel. Keene v. Supervisors*, 142 N. Y. 271; *Dygert v. Schenck*, 23 Wend. 446.

§ 131. **Additional county aid.**—When it shall appear to the board of supervisors of any county that any one of the towns in their county will be unreasonably burdened by erecting or repairing any necessary free bridges in such town or upon its borders, such board of supervisors may cause such sum of money, not exceeding two thousand dollars in any one year, in addition to the amounts provided for in the last preceding section, to be raised and levied upon the county to be used to pay such portion of the expenses of erecting or repairing such bridge as such board may deem proper.

Repealed by County Law, L. 1892, ch. 686.

Section 63 of the County Law was evidently intended to be a substitute for the above section. It provides as follows:

§ 63. COUNTY AID TO TOWNS FOR THE CONSTRUCTION AND REPAIR OF BRIDGES.—If the board of supervisors of any county shall deem any town in the county to be unreasonably burdened by its expenses for the con-

Statement of expenses.

struction and repair of its bridges, the board may cause a sum of money, not exceeding two thousand dollars in any one year, to be raised by the county and paid to such town to aid in defraying such expenses.

See *People v. Supervisors*, 1 Hill, 50.

§ 132. *Statement of expenses.*—The commissioners of highways of every town in which the whole or any part of any free bridge may be, shall make and deliver to the supervisor of the town, on or before the first day of November in each year, a written statement, verified by one of them, containing a description of such bridge, the whole expense in items incurred by the town during the year preceding for its construction or repair.

Revised from L. 1883, ch. 346.

See notes under § 130, *ante*.

§ 133. *Supervisors to levy tax.*—Every supervisor to whom such statement is delivered shall present the same to the board of supervisors of his county at its next annual session thereafter, and the board of supervisors shall levy upon the taxable property of the county a sum sufficient to pay its proportion of such expense, and the same when collected shall be paid to the commissioners of highways of such town to be applied toward the payment of such expense.

Revised from L. 1883, ch. 346.

See notes under § 130, *ante*.

§ 134. *Joint liabilities of towns, and their joint contracts.*—Whenever any two or more towns shall be liable to make or maintain any bridge or bridges, the same shall be built and maintained at the joint expense of such towns, without reference to town lines. The commissioners of highways of all the towns, or of one or more

Joint liabilities of towns. and their joint contracts.

of such towns, the others refusing to act, may enter into a joint contract for making and repairing such bridges.

Revised from L. 1841, ch. 225, as amended by L. 1857, ch. 383.

See notes under § 16, *ante*, as to the joint liability of towns and highway commissioners for defective and unsafe bridges.

The duty of the commissioner of highways to divide a town into road districts for the purpose of keeping the highways in repair, does not include the duty to repair bridges. Such latter duty is separately imposed by this and the following sections. (*Day v. Day*, 94 N. Y. 153.)

The duty to keep and maintain bridges is a joint one imposed by the legislature. (*Oakley v. Town of Mamaroneck*, 39 Hun, 448.)

The liability of commissioners of highways under a bridge contract is a joint one. (*Corey v. Rice*, 4 Lans. 141.)

This section is made to include all towns in which any part of the bridge is located. (*Lapham v. Rice*, 55 N. Y. 472.)

The expense of maintenance is to be borne equally by the towns liable without regard to the portion of the bridge located in either. (*Lapham v. Rice*, 55 N. Y. 472.)

Where a bridge has been constructed under a joint contract by the commissioners of several towns and been accepted, the liability of the towns is not only joint but several. (*Harris v. Houck*, 57 Barb. 619.)

The liability of adjoining towns to make and maintain bridges cannot be changed by a submission of the case to arbitration. (*Corey v. Rice*, 4 Lans. 141.)

As to whether one of two towns can relieve the other from responsibility for the care of a bridge for which they are jointly liable. (*Getty v. Hamlin*, 46 Hun, 1.)

Where three towns were liable for the repairing of a bridge and one of them paid one-half the expense, it could not recover back the excess so paid. (*Flynn v. Hurd*, 118 N. Y. 19.)

As to approval by town of informal contract by commissioners. (*Edwards v. Ford*, 22 App. Div. 277.)

Where two towns are liable to maintain a bridge they are also liable to maintain the approaches thereto. (*Edwards v. Ford*, 22 App. Div. 277.)

Where a county by special act is required to maintain a bridge between adjoining towns, no act of their highway commissioners could bind such towns for repairs to the bridge. (*Phelps v. Hawley*, 52 N. Y. 23.)

A highway legally laid out will be presumed to be continued so as to make

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two towns separated by a stream, jointly liable for the erection of a bridge in the line of the highway. An abandonment is not shown by the fact that part of the road has not been worked for six years, but one town may show that the approach to the bridge on its side has never been opened. (*Beckwith v. Whalen*, 65 N. Y. 332; reversed in 70 N. Y. 432.)

See *Surdam v. Fuller*, 31 Hun, 500; *Matter of Freeholders of Montezuma*, 38 St. Rep. 970; *Clapp v. Town of Ellington*, 87 Hun, 542.

§ 135. Refusal to repair.—If the commissioners of highways of either of such towns, after notice in writing from the commissioners of highways of any other of such towns, shall not within twenty days give their consent in writing to build or repair any such bridge, and shall not within a reasonable time thereafter do the same, the commissioners of highways giving such notice may make or repair such bridge, and then maintain an action in the name of the town, against the town whose commissioners neglect or refuse to join in such making or repairing, and in such action, the plaintiffs shall be entitled to recover so much from the defendant, as the town would be liable to contribute to the same, together with costs and interest.

Revised from L. 1841, ch. 225, as amended by L. 1857, ch. 383.

See § 142, *post*, as to refusal to repair bridge; see notes under §§ 16, 17, *ante*.

It is essential to the maintenance of an action as herein prescribed that the statutory notice be given. (*Flynn v. Hurd*, 118 N. Y. 19.)

An absolute refusal by the commissioner of one town to assist in the repair of a bridge amounts to a waiver of the twenty days' notice required by this section. (*Day v. Day*, 94 N. Y. 153; *Clapp v. Town of Ellington*, 87 Hun, 542.)

An action will lie under this section where the commissioners of one of several liable towns, though having met with the other commissioners and agreed to join in the repair, yet have neglected to pay their share of the expense. (*Surdam v. Fuller*, 31 Hun, 500.)

An allegation in the complaint that the defendant towns had money

Proceedings in court.

with which to do the duty imposed upon them by law is not necessary to the complaint. (*Oakley v. Town of Mamaroneck*, 39 Hun, 448.)

If two of three commissioners have paid the indebtedness of a third, they must sue separately for the portions paid by them respectively; where the action is joint by the two to recover the whole amount paid for the third, and the complaint does not show otherwise, the presumption is in favor of a payment from joint funds. (*Corey v. Rice*, 4 Lans. 141.)

See *Harris v. Houck*, 57 Barb. 619; *Phelps v. Hawley*, 3 Lans. 160; *Hawxhurst v. Mayor*, 43 Hun, 588.

§ 136. **Proceedings in court.**—Whenever any adjoining towns shall be liable to make or maintain any bridge over any streams dividing such towns, whether in the same or different counties, three freeholders in either of such towns may, by petition signed by them, apply to the commissioners of highways in each of such towns, to build, rebuild or repair such bridge, and if such commissioners refuse to build, rebuild or repair such bridge within a reasonable time, either for want of funds or any other cause, such freeholders, upon affidavit and notice of motion, a copy of which shall be served on each of the commissioners, at least eight days before the hearing, may apply to the supreme court at a special term thereof, to be held in the judicial district in which such bridge, or any part thereof, shall be located, for an order requiring such commissioners to build, rebuild or repair such bridge, and the court upon such motion may, in doubtful cases, refer the case to some disinterested person to ascertain the requisite facts in relation thereto, and to report the evidence thereof, to the court. Upon the coming in of the report, in case of such reference, or upon or after the hearing of the motion, in case no such reference shall be ordered, the court shall make an order thereon as the justice of the case shall require. If the motion be granted in whole or in part, whereby funds shall be needed by the commissioners to carry the order

Commissioners to institute proceedings.

into effect, such court shall specify the amount of money required for that purpose, and how much thereof shall be raised in each town.

Revised from L. 1857, ch. 639, §§ 1, 2.

Decisions under the act of 1857, ch. 639, authorizing the supreme court to order the building of a bridge over a stream forming the boundary between two towns. (*Matter of Mt. Morris and Castile*, 41 Hun, 29; *Matter of Commissioners of Glen v. Florida*, 20 St. Rep. 394; *Ex parte Commissioners of Allegany and Carrollton*, 59 N. Y. 313; *Case of Irondequoit and Penfield*, 68 N. Y. 376; *Matter of Spier*, 115 N. Y. 665; s. c., 20 St. Rep. 389.)

§ 137. *Commissioners to institute proceedings.*—The commissioners of highways of any such town, may institute and prosecute proceedings under this chapter, in the name of the town, to compel the commissioners of such adjoining towns, to join in the building, rebuilding or repair of any such bridge, in like manner as freeholders are hereby authorized.

Revised from L. 1857, ch. 639, § 3.

See *Beckwith v. Whalen*, 65 N. Y. 322; *Phelps v. Hawley*, 3 Lans. 160.

§ 138. *Their duty.*—The order for building, rebuilding or repairing a bridge being made, and a copy thereof being served on the commissioners of highways of such adjoining towns respectively, the commissioners of highways of such towns shall forthwith meet and fix on the plan of such bridge, or the manner of repairing the same, and shall cause such bridge to be built, rebuilt or repaired out of any funds in their hands applicable thereto; and if an adequate amount of funds are on hand, they shall cause the same to be built, rebuilt or repaired upon credit, or in part for cash and in part upon credit, according to the exigency of the case; and the commissioners may enter into a contract for building, rebuilding or repairing such

Commissioners to report.

bridge, pledging the credit of each town for the payment of its appropriate share, so far as the same shall be upon credit.

Revised from L. 1857, ch. 639, § 4.

§ 139. *Commissioners to report.*—The commissioners of highways of each town, shall make a full report of their proceedings in the premises to the town board, at the time of making their annual report. They shall attach to the copy of the order granted by the supreme court, an accurate account under oath, of what has been done in the premises, and deliver the same to the supervisor of their town. The board of supervisors at their annual meeting, shall levy a tax upon each of such towns, when in the same county, and upon the appropriate town when in different counties, for its share of the costs of building, rebuilding or repairing such bridge, after deducting all payments actually made by the commissioners thereon; which tax, including prior payments, shall in no case exceed the amount specified in the order.

Revised from L. 1857, ch. 639, § 5.

§ 140. *Appeals.*—Either party aggrieved by the granting or refusing to grant such order by the court at special term, may appeal from such decision to the general term of the supreme court for the review of the decision. The general term may alter, modify or reverse the order, with or without costs.

Revised from L. 1857, ch. 639, § 6.

§ 141. *Power of court on appeal.*—The special term may grant or refuse costs as upon a motion, including also witnesses' fees, referees' fees and disbursements. The appeal provided for in the last preceding section, shall conform to the practice of the supreme court, in case of

Refusal to repair bridge.

appeal from an order of a special term, to the general term.

Revised from L. 1857, ch. 639, § 7.

§ 142. Refusal to repair bridge.—Whenever any such bridge shall have been or shall be so out of repair as to render it unsafe for travelers to pass over the same, or whenever any such bridge shall have fallen down, or been swept away by a freshet or otherwise, if the commissioners of highways of the adjoining towns after reasonable notice of such condition of the bridge, have neglected or refused, or shall neglect or refuse to repair or rebuild it, then whatever funds have been or shall be necessarily or reasonably laid out or expended in repairing such bridge, or in rebuilding the same, by any person or corporation, shall be a charge on such adjoining towns, each being liable for its just proportion; and the person or corporation who has made such expenditure, or shall make such expenditures, may apply to the supreme court, at a special term, for an order requiring such towns severally to reimburse such expenditures, which application shall be made by serving papers upon the commissioners of highways of each of such towns at least eight days; and the court may grant an order requiring each of the adjoining towns to pay its just proportion of the expenditures, specifying the same; and the commissioners of highways in each of such towns shall forthwith serve a copy of such order upon the supervisor of each of their towns, who shall present the same to the board of supervisors, at their next annual meeting. The board of supervisors shall raise the amount charged upon each town by the order, and cause the same to be collected and paid to such persons or corporation as incurred the expenditure. The order shall be appealable.

Revised from L. 1857, ch. 639, § 8.

See § 10, *ante*, where bridge lies wholly within a town; and notes under § 135, *ante*.

Penalty, and notice on bridge.

§ 143. **Penalty, and notice on bridge.**—The commissioners of highways may fix and prescribe a penalty, not less than one, nor more than five dollars, for riding or driving faster than a walk on any bridge in their town, whose chord is not less than twenty-five feet in length and put up and maintain in a conspicuous place at each end of the bridge, a notice in large characters, stating each penalty incurred.

Revised from 1 R. S., ch. 16, tit. 1, art. 6, § 122, as amended by L. 1875, ch. 22, § 1, and from L. 1873, ch. 477, §§ 1, 2.

§ 144. **Offense.**—Whoever shall ride or drive faster than a walk over any bridge, upon which notice shall have been placed, and shall then be, shall forfeit for every offense, the amount fixed by such commissioners, and specified in the notice.

Revised from 1 R. S., ch. 16, tit. 1, art. 6, §§ 123, 124, as amended by L. 1875, ch. 22, § 2, and from L. 1873, ch. 477, § 3.

§ 145. **Iron bridges.**—No town or its officers shall be compelled to accept or pay for an iron or steel bridge exceeding two hundred feet in length, or having a span or spans exceeding one hundred feet in length, constructed therein or upon its borders, until the state engineer and surveyor shall certify to the completion of the bridge, pursuant to the contract under which it shall have been constructed, with his approval of the manner of its construction and the material thereof; and all contracts made for the construction of any such bridge, shall be subject to the provisions of this section.

New.

See *White v. Town of Ellisburgh*, 18 App. Div. 514; *People, ex rel. Slater v. Smith*, 83 Hun, 432.

Miscellaneous provisions.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

SECTION 150. Papers, where filed.

151. When commissioners do not act.
152. Costs on motion.
153. Injuries to highways.
154. When town not liable for bridge breaking.
155. Steam traction engine on highway.
156. Trees, to whom they belong.
157. Carriages meeting to turn to the right.
158. Intemperate drivers not to be engaged.
159. Drivers, when to be discharged.
160. Leaving horses without being tied.
161. Owners of certain carriages liable for acts of drivers.
162. Term "carriage" defined.
163. Entitled to free use of highways.
164. Penalties, how recovered.
165. Extent of this chapter.*
165. Stone and rubbish not to be dumped in highways.

SECTION 150. *Papers, where filed.*—All applications, certificates, appointments and other papers relating to the laying out, altering or discontinuing of any highway shall be filed by the commissioners of highways as soon as a decision shall have been made thereon in the town clerk's office of their town.

Revised from 1 R. S., ch. 16, tit. 1, art. 4, § 83.

Where an application to lay out a highway had been duly filed as prescribed in this section, it was held that further proof of the signatures to the application was not necessary. The paper was a public record and proved itself. (*Van Bergen v. Bradley*, 36 N. Y. 316.)

* So in the original.

When commissioners do not act.

See *McCarthy v. Whalen*, 19 Hun, 503; *Phillips v. Schumacher*, 10 Hun, 405; *Patterson v. New York*, 1 Paige, 114.

§ 151. *When commissioners do not act.*—When any commissioner or other officer appointed by a court under this chapter shall neglect or be prevented from serving, the court which appointed him shall appoint another in his place.

New.

§ 152. *Costs on motion.*—Costs of a motion to confirm, vacate or modify the report of commissioners appointed by the court to lay out, alter or discontinue a highway may be allowed in the discretion of the court not exceeding fifty dollars. Costs of any other motion in a proceeding in a court of record, authorized by this chapter, may be allowed in the discretion of the court not exceeding ten dollars.

New.

See § 92, *ante*, and notes thereunder, as to costs, by whom paid.

§ 153. *Injuries to highways.*—Whoever shall injure any highway or bridge maintained at the public expense by obstructing or diverting any creek, water-course or sluice, or by dragging logs or timber on its surface, or by any other act, or shall injure, deface or destroy any milestone or guide-post erected on any highway, shall for every such offense, forfeit treble damages.

Revised from 1 R. S., ch. 16, tit. 1, art. 7, §§ 128-130.

See §§ 104, 105, *ante*, and notes thereunder as to obstructions in highway, and how removed; § 15, *ante*, and notes thereunder as to actions for injuries to highways; § 164, *post*, as to actions by commissioners to recover penalties.

Injuries to highways.

Penal Code Provisions.

§ 373. FLOATING LOGS OR DEFACING MARKS THEREON.—A person who:

1. Floats, runs or assists in floating or running any lumber, logs or other timber upon or over any river not excepted by law, within this state, recognized by law or use as a public highway for the purpose of floating and running lumber, logs and other timber therein, without first filing the bond executed and approved as required by law;
-

Is guilty of a misdemeanor.

§ 385. "PUBLIC NUISANCE" DEFINED.—A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission;

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3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a public park, square, street or highway;
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§ 429. ICE CUTTINGS AND BRIDGES.— . . . A person who cuts, loosens or detaches from any bay, estuary, inlet, or main, or island shore of the St. Lawrence river, within the jurisdiction of this state, any field of ice, or large body of ice, used or suited for use, as a bridge or passage way between an island of the river and the main shore, or between any islands of such river, is guilty of a misdemeanor.

§ 431. NOISSOME OR UNWHOLESOME SUBSTANCES, ETC., IN HIGHWAY.—A person, who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

§ 639. INJURING HIGHWAY BOUNDARY, PIER, SEA WALL, DOCK, ROCK, BOUY, LANDMARK, MILE BOARD, PIPE, MAIN, SEWER, MACHINE, TELEGRAPH, ETC.—A person who wilfully or maliciously displaces, removes, injures, or destroys,

When town not liable for bridge breaking.

1. A public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way; or,

6. A mile board, mile stone, or guide post, erected upon a highway, or any inscription upon the same;

Is punishable by imprisonment for not more than two years.

§ 661. THROWING SUBSTANCE INJURIOUS TO ANIMALS IN PUBLIC PLACE, A MISDEMEANOR.—A person who wilfully throws, drops or places, or causes to be thrown, dropped or placed, upon any road, highway, street or public place, any glass, nails, pieces of metal or other substance which might wound, disable or injure any animal, is guilty of a misdemeanor.

§ 154. *When town not liable for bridge breaking.*

—No town shall be liable for any damage resulting to person or property, by reason of the breaking of any bridge, by transportation on the same, of any vehicle and load, together weighing four tons or over; but any owner of such vehicle or load, or other person engaged in transporting or driving the same over any bridge, shall be liable for all damages resulting therefrom.

Revised from L. 1837, ch. 526, § 1, as amended by L. 1890, ch. 210.

See § 16, *ante*, and notes thereunder as to liability of town for defective highway.

§ 155. *Steam traction engines on highway.*—The owner of a carriage, vehicle or engine, propelled by steam, his servant or agent, shall not allow, permit or use the same to pass over, through or upon any public highway or street, except upon railroad tracks, unless such owners, or their agents or servants, shall send before the same, a person of mature age, at least one-eighth of a mile in advance, who shall notify, and warn persons traveling or using such highway or street, with horses or other domestic animals, of the approach of such carriage, vehicle or

Trees, to whom they belong.

engine; and at night such person shall carry a red light, except in incorporated villages and cities.

Revised from L. 1886, ch. 269.

Penal Code Provision.

§ 640 MALICIOUS INJURY AND DESTRUCTION TO PROPERTY.—A person who wilfully,

11. Drives or leads along a public highway a wild and dangerous animal, or a vehicle or engine propelled by steam, except upon a railroad, along a public highway, or causes or directs such animal, vehicle or engine to be so driven, led, or to be made to pass, unless a person of mature age shall precede such animal, vehicle or engine by at least one-eighth of a mile, carrying a red light, if in the night-time, and gives warning to all persons whom he meets traveling such highway, of the approach of such animal vehicle or engine;

Shall be deemed guilty of a misdemeanor.

§ 156. *Trees, to whom they belong.*—All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner or occupant of such land, except such of them as may be requisite to make or repair the highway or bridges on the same land.

Revised from 1 R. S., ch. 16, tit. 1, art. 7, § 126.

See notes under § 105, *ante*, as to the removal of trees as encroachments; L. 1881, ch. 344, Appendix, *post*, as to prevention of mutilation of shade trees; Village Law, § 89, sub. 8, as to power of village trustees to protect shade trees.

See *Edsall v. Howell*, 86 Hun, 424, as to the ownership of trees set out by an abutting owner after the laying out of a highway and as to the measure of damages for their destruction.

Where, in a grant of land, there is a presumption that the grantee owns to the center of the street, all shade trees in front of the premises belong to such grantee. (*McCruden v. Rochester Ry. Co.*, 5 Misc. 59.)

Carriages meeting to turn to the right.

§ 157. *Carriages meeting to turn to the right.*—Whenever any persons traveling with any carriages, shall meet on any turnpike road or highway, the persons so meeting shall seasonably turn their carriages to the right of the center of the road, so as to permit such carriages to pass without interference or interruption, under the penalty of five dollars for every neglect or offense, to be recovered by the party injured.

Revised from 1 R. S., ch. 20, tit. 13, § 1.

See notes under § 100, *ante*, as to the uses of and right of passage over highways.

See § 163, *post*, as to the free use of highways; Railroad Law, § 33, Appendix, *post*, as to the duties of railroads at crossings; see, also, Thornton on Railroad Fences.

It is extremely doubtful whether the law in regard to keeping to the right on a public highway applies to any one except the drivers of vehicles of some kind; and even as to them there are many exceptions. (*Mooney v. Trow, &c. Co.*, 2 Misc. 238; *Newman v. Ernst*, 31 St. Rep. 1; *Harpell v. Curtis*, 1 E. D. Smith, 78; *Pike v. Bosworth*, 7 St. Rep. 665; *Smith v. Dygert*, 12 Barb. 613.)

Runaway horses should be guided to the right side of the road to avoid a collision. But if the horses are beyond the control of the driver and he uses due diligence and the best of his ability as a skillful driver to control them, the law of the road does not apply. (*Cadwell v. Arnheim*, 81 Hun, 39; s. c., 152 N. Y. 182.)

The centre of the road means the centre of the worked part of the road; it is immaterial that one side was rougher than the other. (*Earing v. Lansing*, 7 Wend. 185; *Simmonson v. Stellenmerf*, Edm. S. C. 194; *Pike v. Bosworth*, 7 St. Rep. 665.) And when snow is upon the ground it is sufficient to keep to the centre of the beaten track. (*Smith v. Dygert*, 12 Barb. 613.)

The rule does not apply to a traveller on horseback meeting another horseman or a vehicle; reasonable care is all that is required in such case. (*Dudley v. Bolles*, 24 Wend. 465.)

A person driving upon a public highway in advance of another vehicle is not bound to give way or give facilities to the overtaking vehicle to enable it to pass; but he is bound to refrain from any manoeuvre calculated

Carriages meeting to turn to the right.

to embarrass an overtaking vehicle in its attempt to pass. (*Crabtree v. Otterson*, 22 App. Div. 393.)

Where obstructions of a serious nature exist on one side of the road, the rule may be said not to apply. (*Mooney v. Trow Directory, &c. Co.*, 2 Misc. 238; *Earing v. Lansing*, 7 Wend. 185; *Pike v. Bosworth*, 7 St. Rep. 665; *Simmonson v. Stellenmerf*, Edm. S. C. 194.)

In an action brought for negligence causing a collision upon a highway, the plaintiff is bound to show that although upon the right side of the highway he endeavored to avoid collision. (*Schimpf v. Sliter*, 64 Hun, 463.)

One who is on the wrong side is presumptively negligent; but the other party must show his injury as a result of such negligence and also his own freedom from contributory negligence. (*Newman v. Ernst*, 31 St. Rep. 1.) And it is no excuse when one is driving on the wrong side that he had no time to turn out. (*Simmonson v. Stellenmerf*, Edm. S. C. 194; *Pike v. Bosworth*, 7 St. Rep. 665.)

This section is of necessity inapplicable to street railway vehicles when meeting common vehicles in the streets of a city. (*Hegan v. Railroad Co.*, 15 N. Y. 380; *Whitaker v. Railroad Co.*, 51 N. Y. 295.) So with a steam railroad company. (*Barker v. Railroad Co.*, 4 Daly, 274.) And a street railway has the right of way in respect to vehicles passing between their tracks either way; but in crossing other streets than that upon which their tracks are laid, street car companies have no rights superior to other vehicles. (*Buhrens v. Railroad Co.*, 125 N. Y. 702; *O'Neil v. Railroad Co.*, 129 N. Y. 125.)

Foot passengers and vehicles have equal rights in the highways and especially at street crossings; they are bound not only to use reasonable care as to their own safety, but also to avoid doing injury to others. (*Barker v. Savage*, 45 N. Y. 191; *Belton v. Baxter*, 54 N. Y. 245; *Atkinson v. Oelsner*, 32 St. Rep. 1088; *Moebus v. Herman*, 108 N. Y. 349; *Durant v. Lipsius*, 5 St. Rep. 841; *Murphy v. Orr*, 96 N. Y. 14; *Birket v. Knickerbocker Ice Co.*, 110 N. Y. 504; s. c., 41 Hun, 404; *Cowan v. Snyder*, 5 Supp. 340; *Henderson v. Knickerbocker Ice Co.*, 23 St. Rep. 530; s. c., 119 N. Y. 619; *Brooks v. Schwerin*, 54 N. Y. 343.)

Where two vehicles approach each other on streets running at a right angle, neither has the right of way; the one first signalling his intention to proceed, has a right to expect that his signal will be obeyed. (*Koester v. Decker*, 22 Misc. 353.) As to two street cars. (*Loudoun v. Railroad Co.*,

Intemperate drivers not to be engaged.

16 App. Div. 152); and as to a motor car and vehicle (*Bresky v. Railroad Co.*, 16 App. Div. 83; *Hergert v. Union Ry. Co.*, 25 App. Div. 218; *Huber v. Nassau R. R. Co.*, 22 App. Div. 426.)

Penal Code Provision as to Railroad Crossings.

§ 421. DUTIES OF LOCOMOTIVE ENGINEERS.—A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities) or to continue the ringing of such bell or sounding such whistles at intervals, until such locomotive, and the train to which the locomotive is attached, shall have completely crossed such road or street, or any officer of a corporation who shall wilfully obstruct, or cause to be obstructed, any farm or highway crossing with any locomotive or car for a longer period than five consecutive minutes, is guilty of a misdemeanor.

As to the right of way of an ambulance in preference to an ice wagon. (*Byrne v. Knickerbocker Ice Co.*, 21 St. Rep. 469; s. c., 121 N. Y. 700.)

Penal Code Provision as to Ambulance.

§ 432. AMBULANCES.—A person who wilfully stops or obstructs the passage of any ambulance or vehicle used for the transportation of sick or wounded persons or animals upon any public street, highway or place, or who wilfully injures the same, or wilfully drives any vehicle into collision therewith, is guilty of a misdemeanor.

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Care required of one driving in a public street, as to street sweepers, &c. (*Smith v. Bailey*, 14 App. Div. 283.)

Where a railway car obstructs the crossing of a public street, a traveller has a right to pass over its platform. (*Shea v. Railroad Co.*, 62 N. Y. 180.)

See *Baumann v. Gilmour*, 31 St. Rep. 283; *O'Neil v. Railroad Co.*, 3 Misc. 521.

§ 158. *Intemperate drivers not to be engaged.*—No person owning any carriage for the conveyance of passengers, running or traveling upon any highway or road, shall employ, or continue in employment, any person to drive such carriage, who is addicted to drunkenness, or to the excessive use of spirituous liquor; and if

Drivers, when to be discharged.

any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment.

Revised from 1 R. S., ch. 20, tit. 13, § 2.

§ 159. **Drivers, when to be discharged.**—If any driver, while actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, the owner of such carriage shall, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith discharge such driver from his employment; and every such owner, who shall retain, or have in his service within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice.

Revised from 1 R. S., ch. 20, tit. 13, § 3.

§ 160. **Leaving horses without being tied.**—No driver of any carriage used for the purpose of conveying passengers for hire, shall leave the horses attached thereto, while passengers remain in the same, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars.

Revised from 1 R. S., ch. 20, tit. 13, § 5.

See Code of Civil Procedure, §§ 3082-3115, Appendix, *post*, as to action or special proceeding relating to an animal straying upon the highway.

Cow obstructing highway by her tethering rope. (*Gulliver v. Blauvelt*, 14 App. Div. 523.)

See *Davis v. Kallfelz*, 22 Misc. 602.

Owners of certain carriages liable for acts of drivers.

§ 161. *Owners of certain carriages liable for acts of drivers.*—The owners of every carriage running or traveling upon any turnpike road or highway, for the conveyance of passengers, shall be liable jointly and severally, to the party injured, for all injuries and damages done by any person in the employment of such owners, as a driver, while driving such carriage, whether the accident* occasioning such injury or damage be willful or negligent, or otherwise, in the same manner as such driver would be liable.

Revised from 1 R. S., ch. 20, tit. 13, § 6.

At common law the liability of the owner of a vehicle, used for the transportation of persons for injuries resulting from the acts of his driver, extends to those injuries only which result from the driver's misjudgment or negligence while engaged for the owner in his vocation as a driver. (*Whitaker v. Railroad Co.*, 51 N. Y. 295; *Wright v. Wilcox*, 19 Wend. 344; *Hibbard v. R. R. Co.*, 15 N. Y. 467; *Mali v. Lord*, 39 N. Y. 383; *Fraser v. Freeman*, 43 N. Y. 566; *Isaacs v. R. R. Co.*, 47 N. Y. 122.)

This section held not to apply to the driver of a street railway company. (*Whitaker v. Railroad Co.*, 51 N. Y. 295.) Nor to the conductor. (*Isaacs v. Railroad Co.*, 47 N. Y. 122.) See, also, *Rounds v. Railroad Co.*, 64 N. Y. 129; *Mott v. Consumers' Ice Co.*, 73 N. Y. 543; *Shea v. Railroad Co.*, 62 N. Y. 180; *Stewart v. Railroad Co.*, 90 N. Y. 588.

§ 162. *Term "carriage" defined.*—The term "carriage," as used in this article, shall be construed to include stage-coaches, wagons, carts, sleighs, sleds and every other carriage or vehicle used for the transportation of persons and goods, or either of them, and bicycles, tricycles and all other vehicles propelled by manumotive or pedimotive power.

Revised from 1 R. S., ch. 20, tit. 13, § 7, and from L. 1887, ch. 704, § 1.

*So in the original.

Entitled to free use of highways.

§ 163. *Entitled to free use of highways.*—The commissioners, trustees, or other authorities having charge or control of any highway, public street, parkway, driveway or place, shall have no power or authority to pass, enforce, or maintain any ordinance, rule or regulation, by which any person using a bicycle or tricycle, shall be excluded or prohibited from the free use of any highway, public street, avenue, roadway, driveway, parkway or place, at any time when the same is open to the free use of persons having and using other pleasure carriages; but nothing herein, shall prevent the passage, enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in highways, public streets, driveways, parkways and places, in such manner as to limit and determine the proper rate of speed with which such vehicles may be propelled, nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances, nor to prohibit the use* any vehicle upon that part of the highway, street or parkway, commonly known as the foot path or sidewalk.

Revised from L. 1887, ch. 704.

See notes under § 100, *ante*, as to the uses of and right of passage over highways.

See § 157, *ante*, and notes thereunder, as to the law of the road and crossings.

Penal Code Provisions.

§ 652. DRIVING VEHICLES, ET CETERA, ON SIDEWALKS.—A person who wilfully and without authority or necessity drives any team, vehicle, cattle, sheep, horse, swine or other animal along upon a sidewalk is punishable by a fine of fifty dollars, or imprisonment in the county jail not exceeding thirty days, or both.

1. A person who wilfully and without authority or necessity drives any team or vehicle, except a bicycle, upon a side path, or wheelway, con-

*So in the original.

Penalties, how recovered.

structed by or exclusively for the use of bicyclists, and not constructed in a street of a city, is punishable by a fine of not more than fifty dollars, or imprisonment not exceeding thirty days, or both.

§ 654a. PLACING INJURIOUS SUBSTANCES ON ROADS, ETC.—Whoever, with intent to prevent the free use of a cycle thereon, shall throw, drop or place, or shall cause or procure to be thrown, dropped or placed, in or upon any cycle path, avenue, street, sidewalk, alley, road, highway or public way or place, any glass, tacks, nails, pieces of metal, brier, thorn or other substance which might injure or puncture any tire used on a cycle, or which might wound, disable or injure any person using such cycle, shall be guilty of a misdemeanor, and on conviction be fined not less than five nor more than fifty dollars.

See *Lechner v. Village of Newark*, 19 Misc. 452, as to ordinance allowing bicycles upon sidewalks.

See also *Fuller v. Redding*, 13 App. Div. 61.

§ 164. *Penalties, how recovered.*—All penalties or forfeitures given in this chapter, and not otherwise specially provided for, shall be recovered by the commissioners of highways, in the name of the town in which the offence shall be committed; and when recovered, shall be applied by them in improving the highways and bridges in such town.

Revised from 1 R. S., ch. 16, tit. 1, art. 7, § 131.

See § 15, *ante*, as to actions by commissioners for injuries to highways, and § 105, *ante*, as to actions to compel the removal of encroachments.

There is no provision in the statute which authorizes the commissioners of highways of two towns to unite as plaintiffs and bring an action to recover the penalty or forfeiture for an encroachment upon a highway. The authority of such officers to maintain actions is given by statute, and is confined to those of the town where the offense had been committed. (*Bradley v. Blair*, 17 Barb. 480.)

Commissioners of highways cannot maintain a suit in their official names or titles; but must use their individual names, annexing their official titles. (*Supervisor of Galway v. Stimson*, 4 Hill, 176; *Commissioners v. Peck*, 5 Hill, 215; *Gould v. Glass*, 19 Barb. 179.)

See *Commissioners v. Peck*, 5 Hill, 215; *Trustees of Jordon v. Otis*, 37 Barb. 50.

Stone and rubbish not to be dumped in highways.

§ 165. ***Stone and rubbish not to be dumped in highways.***—No stone or other rubbish shall be drawn to and deposited within the limits of any highway, except for the purpose of filling in a depression or otherwise improving the highway, with the consent of the commissioner of highways and under the direction of a commissioner or overseer of highways.

Added by L. 1898, ch. 352.

Regulation of ferries.

ARTICLE VII.

REGULATION OF FERRIES.

SECTION 170. Licenses.

- 171. Undertaking.
- 172. Appendages for rope ferries.
- 173. Superintendent of public works may lease right of passage.
- 174. When schedules to be posted.

SECTION 170. **Licenses.**—The county court in each of the counties of this state, or the city court of a city, may grant licenses for keeping ferries in their respective counties and cities, to such persons as the court may deem proper, for a term not exceeding five years. No license shall be granted to a person, other than the owner of the land through which that part of the highway adjoining to the ferry shall run, unless the owner is not a suitable person or shall neglect to apply after being served with eight days' written notice from such other person of the time and place at which he will apply for such license, or having obtained such license, shall neglect to comply with the conditions of the license, or maintain the ferry. Every license shall be entered in the book of minutes of the court by the clerk; and a certified copy thereof shall be delivered to the person licensed. When the waters over which any ferry may be used, shall divide two counties or cities, or a county and city, a license obtained in either of the counties or cities shall be sufficient to authorize transportation of persons, goods, wares and merchandise, to and from either side of such waters.

Revised from 1 R. S., ch. 16, tit. 2, §§ 1-3, 5-9.

See County Law, § 78, Appendix, *post*, as to regulation of ferries by board of supervisors; notes under § 100, *ante*, as to ferries as highways.

Licenses.

Penal Code Provision.

§ 415. FERRIES.—A person who:

1. Maintains a ferry for profit or hire upon any of the waters of this state without authority of law; or,
2. Having entered into a recognizance to keep or maintain a ferry, violates the condition of such recognizance,

Is guilty of a misdemeanor.

Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either county.

As to the granting of ferry licenses or rights by the legislature being in violation of the state constitution. (*Matter of the Union Ferry Co.*, 98 N. Y. 139.)

The legislature has power to regulate, control and define the powers of persons or corporations under ferry franchises. (*Spader v. New York Elevated Railroad Co.*, 3 Abb. N. C. 467; *Power v. Athens*, 99 N. Y. 592; *Matter of Union Ferry Co.*, 98 N. Y. 139; *New York v. Starin*, 106 N. Y. 1.)

The right to license ferries carries with it the right to grant exclusive privileges. (*Costar v. Brush*, 25 Wend. 628.) A ferry license, however, will not be held to be exclusive, unless there is something therein showing plainly that exclusive rights were intended to be granted. (*Power v. Athens*, 99 N. Y. 592.)

The grant of a ferry right by the state is not necessarily exclusive of the right to grant similar privileges to other parties. (*Thompson v. New York and Harlem Railroad Co.*, 3 Sand. Ch. 625.)

A ferry license may not be granted without the notice to the land owner required by this section ; the owners of a rival ferry may complain of the lack of notice. (*Matter of Talcott*, 31 Hun, 464.)

Notice need not be given in applying for a ferry license to persons who have obtained a license for a ferry at the same place. (*Wiswall v. Wandell*, 3 Barb. Ch. 312.)

It is not illegal for the grantees of an exclusive ferry right to agree to try to prevent the establishment of a third ferry. (*Costar v. Brush*, 25 Wend. 628.)

As to when it is proper to establish and operate ferries. (*New York v. Steamboat Co.*, 106 N. Y. 28.)

A ferry maintained without objection for a number of years will be presumed to have been lawfully established. (*Jordan v. Gas Light Co.*, 65 How, Pr. 255.)

Lenses.

Circumstances not amounting to a violation of the statutes in reference to maintaining a ferry without authority of law. (*People v. Mago*, 69 Hun, 559.)

Where a ferry franchise has been granted and accepted it partakes of the nature of a contract, and as such is protected by the United States constitution. (*Benson v. New York*, 10 Barb. 223.)

Ferry rights are not to be construed strictly against the grantees thereof. (*New York v. Starin*, 106 N. Y. 1.)

As to the leasing of ferry rights or licenses. (*Dewint v. Wiltsie*, 9 Wend. 325; *Starin v. New York*, 42 Hun, 549; *Staten Island Rapid Transit Co. v. New York*, 2 Supp. 680; s. c., 110 N. Y. 96.)

The grantees of ferry rights are obliged to maintain a ferry with suitable accommodations for the public. (*New York v. Starin*, 106 N. Y. 1.)

A municipal corporation may require ferry property to be repaired and put in safe condition. (*Jordan v. Gas-Light Co.*, 65 How. Pr. 255.)

A grant of land under water, with a reservation of a portion thereof "for the uses and purposes of public streets, avenues and highways," includes in such reservation a use of the land for ferry purposes. (*Jordan v. Gas-Light Co.*, 65 How. Pr. 255.)

When a railroad has been granted the right to transfer its passengers to a public ferry it has no right to transfer other persons to the injury of the ferry owners. (*Aikin v. Western Railroad Co.*, 20 N. Y. 370.)

The city of New York has the exclusive right to establish and regulate ferries from its shores to opposite ones, such as Long Island, Staten Island, &c. (*New York v. Longstreet*, 64 How. Pr. 30; *Benson v. New York*, 10 Barb. 223; *Darlington v. New York*, 31 N. Y. 202; *New York v. New York and Staten Island Ferry Co.*, 49 How. Pr. 250; *People v. New York and Staten Island Ferry Co.*, 49 How. Pr. 511; *New York v. Starin*, 106 N. Y. 1; *New York v. New Jersey Steamboat Nav. Co.*, 106 N. Y. 28.) But see as to ferries over the East River, *Matter of Union Ferry Co.*, 98 N. Y. 139. See, also, *Cunard Steamship Co. v. Voorhies*, 18 J. & S. 253; s. c., 104 N. Y. 525.

The Niagara common pleas has power to grant licenses for ferries over the Niagara river, though the jurisdiction of the state extends only to the centre of the river. (*People v. Babcock*, 11 Wend. 586.)

The city of Albany has exclusive control of all ferries within its limits. (*Aikin v. Western Railroad Corporation*, 20 N. Y. 370.)

Undertaking.

As to the right of ferriage between Hudson and Athens on the Hudson river. (*Power v. Athens*, 99 N. Y. 592.)

Cases treating of negligence of ferry proprietors or corporations. (*Wyckoff v. Queens County Ferry Co.*, 52 N. Y. 32; *Loftus v. Union Ferry Co.*, 22 Hun, 33; s. c., 84 N. Y. 455; *Bartlett v. Transportation Co.*, 29 St. Rep. 357; *Hoffman v. Union Ferry Co.*, 68 N. Y. 385; *Ferris v. Union Ferry Co.*, 36 N. Y. 312; *Hazman v. Hoboken, &c. Co.*, 50 N. Y. 53; *Hawks v. Winans*, 10 J. & S. 451; s. c., 74 N. Y. 609; *Tonkins v. New York Ferry Co.*, 47 Hun, 562; *Fitzpatrick v. Garrisons Ferry Co.*, 49 Hun, 288; *Bartholomew v. Ferry Co.*, 28 St. Rep. 388; *Snelling v. Ferry Co.*, 128 N. Y. 579; s. c., 37 St. Rep. 184.)

§ 171. *Undertaking.*—Every person applying for such license shall, before the same is granted, execute and file with the clerk of the court his undertaking, with one or more sureties, approved by the court, to the effect that he will attend such ferry with sufficient and safe boats and other implements, and so many men to work the same as shall be necessary during the several hours in each day, and at such rates as the court shall direct.

Revised from 1 R. S., ch. 16, tit. 2, § 4.

See Penal Code, § 415, under § 170, *ante*, as to violation of condition of undertaking.

§ 172. *Appendages for rope ferries.*—Any person licensed to keep a ferry may, with the written consent of the commissioners of highways of the town where such ferry may be, erect and maintain within the limits of the highway, at such point as shall be designated in such consent, a post or posts, with all necessary braces and appendages, for a rope ferry.

Revised from L. 1861, ch. 30, § 1.

§ 173. *Superintendent of public works may lease right of passage.*—The superintendent of public works may where ferries are now maintained at tide-water, lease

When schedules to be posted.

the right of passage for foot passengers across state lands adjoining tide water for a period not exceeding ten years, on such conditions as he may deem advantageous to the state.

Revised from L. 1884, ch. 359, § 1.

§ 174. *When schedules to be posted.*—Every person licensed to operate or control any ferry in this state, or between this state and any other state, operating from or to a city of fifty thousand inhabitants or over, shall post in a conspicuous and accessible position outside and adjacent to each entrance to such ferry, and in at least four accessible places, in plain view of the passengers upon each of the boats used on such ferry, a schedule plainly printed in the English language, of the rates of ferriage charged thereon, and authorized by law to be charged for ferriage over such ferry. If any such person shall fail to comply with the provisions of this section, or shall post a false schedule, he shall forfeit the sum of fifty dollars for each days neglect or refusal to post such schedule, or any of them, to be recovered by any person who shall sue therefor, in any court of competent jurisdiction.

A similar provision was found in L. 1888, ch. 260, repealed by L. 1889, ch. 489, § 3.

See Transportation Corporations Law, § 6, as to posting of schedule by corporations.

Penal Code Provision.

§ 415a. PENALTY FOR NEGLECT TO POST SCHEDULE OF FERRY RATES.—A person, corporation or association operating any ferry in this state, or between this state and any other state, operating from or to a city of five hundred thousand inhabitants or over, posting a false schedule of ferry rates, or neglecting to post in a conspicuous and accessible place in each of its ferry-houses, in plain view of the passengers, a schedule, plainly

When schedules to be posted.

printed in the English language, of the rates of ferriage charged thereon and authorized by law to be charged for ferriage over such ferry, is guilty of a misdemeanor.

The provision as to posting a schedule of ferry rates does not apply to foreign corporations. (*Blanchard v. Hoboken Land & Improvement Co.*, 6 Supp. 279.)

As to the right of a municipal government to fix the maximum rates of ferriage. (*People v. New York*, 32 Barb. 102.)

Repealing and other laws.

ARTICLE VIII.

REPEALING AND OTHER LAWS.

SECTION 180. Laws repealed.

- 181. Saving clause.
 - 182. Construction.
 - 183. When to take effect.
- Schedule.

SECTION 180. *Laws repealed.*—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

§ 181. *Saving clause.*—The repeal of a law, or any part of it specified in the annexed schedule, shall not effect or impair any act done, or right accruing, accrued, or acquired, or penalty, forfeiture, or punishment incurred prior to the time when this act takes effect, under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted, or inflicted, as fully and to the same extent, as if such laws had not been repealed; and all actions or proceedings, civil or criminal, commenced under or by virtue of the laws so repealed and pending February twenty-eighth, eighteen hundred and ninety-one, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing, unless it shall be otherwise specially provided by law.

See *Edsall v. Howell*, 86 Hun, 424, as to the operation of this section in regard to repealing L. 1863, ch. 93.

Construction.

§ 182. ***Construction.***—The provisions of this chapter, so far as they are substantially the same as those laws existing on February twenty-eighth, eighteen hundred and ninety-one, shall be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new enactments; and references in laws not repealed, to provisions of law incorporated into this chapter and repealed shall be construed as applying to the provisions so incorporated; nothing in this chapter shall be construed to amend or repeal any provision of the Penal or Criminal Code.

§ 183. ***When to take effect.***—This chapter shall take effect on the first day of March, eighteen hundred and ninety-one.

Schedule of laws repealed.

SCHEDULE OF LAWS REPEALED.

Revised Statutes, Part I, chapter 16 All
 Revised Statutes, Part I, chapter 20, title 13..... All

Laws of	Chapter	Sections
1832.....	107	All
1833.....	149	All
1832.....	274	All
1834.....	267	All
1835.....	154	All
1836.....	122	All
1837.....	431	All
1840.....	300	All
1841	225	All
1845.....	180.....	5, 6, 7, 9, 12, 13, 14
1847.....	455.....	3, 4, 5, 6, 7, 8, 9, 11, 12, 20, 21, 22, 23
1853.....	63	All
1853.....	135	All
1853.....	174	All
1855.....	255	All
1857	383	All
1857.....	491	All
1857.....	615	1
1857.....	639	All
1858.....	51	All
1858.....	103	All
1860.....	61	All
1860.....	468	All
1861.....	30	All
1861.....	311	All
1862.....	243	All
1863.....	93	All
1863.....	444	All
1864.....	395	All
1865.....	442	All

Schedule of laws repealed.

Laws of	Chapter	Sections
1865.....	522	7
1866.....	180	All
1866.....	770	All
1868.....	791	All
1868.....	843	All
1869.....	24	All
1869.....	131	1
1869.....	593	All
1870.....	461	All
1872.....	274	1
1873.....	63	All
1873.....	69	All
1873	395	All
1873.....	448	All
1873.....	477	All
1873.....	773	All
1874.....	169	All
1874.....	570	All
1875.....	22	All
1875.....	196	All
1875.....	341	All
1876.....	340	All
1876.....	348	All
1877.....	197	All
1877.....	344	All
1878.....	44	All
1878.....	49	All
1878.....	114	All
1878.....	245	All
1879	67	All
1880.....	114	All
1880.....	305	All
1880.....	308	All
1880.....	503	All
1881.....	233	All
1881.....	513	All
1881.....	696	All

Schedule of laws repealed.

Laws of	Chapter	Sections
1881.....	700	All
1883.....	346	All
1883.....	371	All
1883.....	398	All
1884.....	220	All
1884.....	251	All
1884.....	359	All
1884.....	396	All
1884.....	479	All
1886.....	269	All
1886.....	344	All
1886.....	422	All
1886.....	452	All
1887.....	471	All
1887.....	526	All
1887.....	704	All
1888.....	240	All
1888.....	260	All
1889.....	120	All
1889.....	146	All
1889.....	259	All

APPENDIX.

General laws relating to highways.

GENERAL LAWS RELATING TO HIGHWAYS.

CONSTITUTION.

ARTICLE I.

§ 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of free-holders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

ARTICLE III.

§ 18. The legislature shall not pass a private or local bill in any of the following cases:

Laying out, opening, altering, working or discontinuing

Constitution.

roads, highways or alleys, or for draining swamps or other low lands.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

ARTICLE XIII.

§ 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm)

Constitution.

that I will support the constitution of the United States, and the constitution of the state of New York, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof: "And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

Selections from Code of Civil Procedure.

SELECTIONS FROM THE CODE OF CIVIL PROCEDURE.

TITLE X.

ACTION OR SPECIAL PROCEEDING, RELATING TO AN ANIMAL STRAYING UPON THE HIGHWAY.

- SECTION 3082. Action against person suffering animals to stray.
3083. Penalties to be recovered.
3084. Certain officers to seize animals straying.
3085. When private person may seize such animals.
3086. Officer or person seizing to present petition.
3087. Precept thereupon.
3088. Id. ; how served.
3089. Proof of service of precept.
3090. Answer ; trial.
3091. Decision in favor of petitioner ; warrant to sell ; execution thereof.
3092. Application of proceeds of sale.
3093. Disposition of surplus.
3094. Id. ; when no claim made within a year.
3095. Order upon claims for surplus ; appeal therefrom.
3096. Proceedings upon decision in favor of person answering.
3097. Demand of possession before trial. Proceedings thereupon.
3098. Id. ; when animal wilfully set at large by third person.
3099. Action by owner in such case.
3100. Action by petitioner and by officer.
3101. Demand of possession after final order and before sale.
3102. Order upon demand of possession ; appeal therefrom.
3103. Id. ; stay of proceedings.
3104. Appeal from final order.
3105. Id. ; by claimant ; stay of proceedings and delivery of possession.

Action against person suffering animals to stray.

SECTION 3106. Proceedings upon affirmation.

3107. Limitation of action for seizing animals.

3108. Certain actions can not be maintained.

3109. Where several animals are trespassing, damages are entire.

Proceedings in such cases.

3110. Proceedings in other cases, where there are different owners.

3111. Surplus, where there are different owners.

3112. When one action, etc., supersedes any other.

3113. Rights of officer when private person fails to prosecute.

3114. Persons having a special property deemed owner.

3115. Agent may act for his principal.

§ 3082. *Action against person suffering animals to stray.*—Any person, who suffers or permits one or more cattle, horses, colts, asses, mules, swine, sheep, or goats, to run at large, or to be herded or pastured, in a public street, highway, park or place, elsewhere than in a city, incurs thereby the penalty or penalties specified in the next section; and any resident of the town, or the officer to whom a fine or penalty is to be paid for the benefit of the poor, as prescribed in section 2875 of this act, or the overseer or superintendent of the poor of the town or district, in which one or more of those animals are found so running at large, herded, or pastured, may maintain an action against him, in a justice's court, held in that town or district, to recover the penalty or penalties so incurred. Where the action is brought by a private person, the justice must pay the proceeds of an execution, issued upon a judgment therein in favor of the plaintiff, after deducting the costs, to the officer, who might have brought the action, as prescribed in this section, to be applied by him to the support of the poor within his town or district.

§ 3083. *Penalties to be recovered.*—If the plaintiff recovers judgment, in an action brought as prescribed in

Certain officers to seize animals straying.

the last section, the justice must award to him the following sums, by way of penalties, besides the costs of the action:

1. For each horse, colt, ass, mule, swine, bull, ox, cow, or calf, five dollars.

2. For each sheep or goat, one dollar.

The entire amount of the penalties may be recovered, in one action, although it exceeds the sum, for which a justice can render a judgment in an ordinary action.

§ 3084. *Certain officers to seize animals straying.*

—Where one or more cattle, horses, colts, asses, mules, swine, sheep, or goats are found running at large, or being herded or pastured, in a public street, highway, park, or place, elsewhere than in a city, the overseer of highways of the road district, or, if they are so found within an incorporated village, the street commissioner thereof, having personal knowledge or being notified of the fact, must immediately seize the animal or animals, and keep it or them in his possession, until disposed of as prescribed in the following sections of this title.

§ 3085. *When private person may seize such animals.*—Any person may seize one or more animals specified in the last section, then running at large, or being herded or pastured, in a public street, highway, park, or place, elsewhere than in a city, bordering upon real property owned or occupied by him; or then trespassing upon real property so owned or occupied, having entered thereupon from such a public street, highway, park, or place. The person making the seizure, must keep the animal or animals seized, in his possession, until disposed of as prescribed in the following sections of this title.

§ 3086. *Officer or person seizing to present petition.*—An officer or other person, who seizes an animal

Precept thereupon.

or animals, as prescribed in either of the last two sections, must immediately file, with a justice of the peace of the town in which the seizure was made, a written petition, verified by his oath; setting forth the facts, which bring the case within either of those sections; briefly describing the animal or animals seized; stating either the name of the owner, or that his name is not known to the petitioner, and can not be ascertained by him with reasonable diligence; and praying for a final order directing the sale of the animal or animals seized, and the application of the proceeds thereof, as prescribed in this title. Where the petition alleges, that any animal or animals seized, were then trespassing upon real property owned or occupied by the petitioner, it must state the amount of the damages, if any, which the petitioner has sustained thereby. In that case, the decision of the justice, or, where the issues are tried by a jury, the verdict must fix the amount of the damages.

§ 3087. *Precept thereupon.*—Upon the presentation of the petition, the justice must issue a precept under his hand; directed to the owner, if his name is stated in the petition, or, if it is not so stated, directed generally to all persons having an interest in the animal or animals seized; briefly reciting the substance of the petition; describing the animal or animals seized, and requiring the person or persons, to whom the precept is directed, to show cause before the justice, at a time and place specified therein, not less than ten or more than twenty days, after the issuing of the precept, why the prayer of the petition should not be granted.

§ 3088. *Id.; how served.*—The precept must be served upon the person, to whom it is directed by his name,

Proof of service of precept.

within the same time, and in like manner as a summons is required to be served, as prescribed in section 2910 of this act. Where it is directed generally to all persons, having an interest in the animal or animals seized, it may be served by a constable of the town, or by an elector thereof, specially authorized so to do by a written indorsement upon the precept, under the hand of the justice, by posting a copy thereof in at least six public and conspicuous places in the town where the seizure was made; one of which places must be the nearest district school-house, or, if the seizure was made within an incorporated village, having schools in charge of a board of education, a building in which such a school is kept. Each copy must be posted, within two days after the precept is issued. Where the precept is directed to a person by his name, and proof is made by affidavit, to the satisfaction of the justice, that it cannot, with reasonable diligence, be personally served upon that person, within the county, at least six days before the return day thereof, the justice may, by a written order, direct that service thereof be made, by posting copies thereof, at least five days before the return day, as prescribed in this section; in which case, service thereof may be made accordingly.

§ 3089. ***Proof of service of precept.***—At the place where the precept is returnable, and at the expiration of the time specified in section 2893 of this act, the petitioner must, unless the precept is directed to a person by his name, and he appears, furnish proof of the service of the precept, as prescribed in the last section. If it was served by a constable, either personally or by posting, his written return upon the precept is sufficient proof of the facts relating to the service, as stated therein. If it was served by a private person, proof of service must be made by affidavit.

Answer; trial.

§ 3090. *Answer; trial.*—The owner, or a person having an interest in any animal seized, may appear upon the return of the precept, and thereby make himself a party to the special proceeding. The person so appearing may, upon the return of the precept, file a written answer, subscribed by him or his attorney, and verified by oath of the person subscribing it, denying, absolutely or upon information and belief, one or more material allegations contained in the petition. His answer must also set forth his interest in the animal or animals seized. The subsequent proceedings must be the same as in an action in a justices' court, wherein an issue of fact has been joined, except as otherwise specially prescribed in this title.

§ 3091. *Decision in favor of petitioner; warrant to sell; execution thereof.*—If no person appears and answers, or if the decision of the justice, or the verdict of the jury, where the issues were tried by a jury, is in favor of the petitioner, the justice must make a final order, directing the sale of the animal or animals seized, and the application of the proceeds thereof, as prescribed in this title. Thereupon the justice must issue a warrant, under his hand, directed generally to any constable of the county, commanding him to sell the animal or animals seized, at public auction, for the best price which he can obtain therefor; and to make return thereof to the justice, at a time and place therein specified, not less than ten or more than twenty days thereafter. The sale must be made upon the like notice, and in like manner, as a sale of property, by virtue of an execution issued by a justice of the peace; and the constable must make return, as required by the warrant, and must pay the proceeds of the sale to the justice, deducting therefrom his fees, at

Application of proceeds of sale.

the rate allowed by law for the collection of such an execution.

§ 3092. *Application of proceeds of sale.*—The justice must apply the proceeds of the sale as follows:

1. He must pay the costs of the petitioner, as taxed by the justice, at the same rates as the costs of an action brought before him, including the justice's fees in such an action; and also the fees for the service of the precept, either personally or by posting, at the rate allowed by law for personal service of a summons by a constable.
2. Out of the remainder of the proceeds, he may retain to his own use, a fee of one dollar, for each animal sold.
3. Out of the remainder of the proceeds, he must pay to the officer, or other person making the seizure, the following fees, for the seizure of each animal seized and sold, to wit: One dollar for each horse, colt, ass, or mule; fifty cents for each bull, ox, cow, or calf; and twenty-five cents for each goat, sheep, or swine; together with a reasonable compensation, fixed by him, for the care and keeping of each animal, from the time of the seizure to the time of the sale; and, also, where any animal sold was seized, while trespassing upon real property owned or occupied by the petitioner, the damages sustained by the petitioner in consequence thereof, as ascertained by the decision of the justice, or the verdict of the jury upon which the final order was made.
4. Out of the remainder of the proceeds, he must pay to the officer, to whom a fine or penalty is to be paid for the benefit of the poor, as prescribed in section 2875 of this act, the following penalties, to wit: five dollars for each horse, colt, ass, mule, bull, ox, cow, calf, or swine, seized and sold; and one dollar for each sheep or goat, seized and sold; which penalties must be received by the officer, for the benefit of the poor of his town or district.

Disposition of surplus.

5. If any surplus remains, he must pay the same to the person or persons entitled thereto, as prescribed in the following sections of this title.

§ 3093. *Disposition of surplus.*—Any person may, within ten days after the return of the warrant, file, with the justice, a written claim to the surplus of the proceeds of the sale, or to any part thereof. On the eleventh day after the return, or, if it is a Sunday or a public holiday, on the first day thereafter, which is neither Sunday nor a public holiday, the justice must proceed to inquire into the claims so filed; and, for the purpose of determining them, he must hear the allegations and proofs of each claimant; and he may issue subpoenas, as upon the trial of an action. He may, upon the application of any claimant, and for good cause shown, adjourn the hearing, from time to time, but not more than thirty days in all. After hearing the allegations and proofs of all the claimants, he must decide the claims, and enter an order accordingly. If no claim is filed; or if the right to the surplus money, or any part thereof, is not established, to the satisfaction of the justice, as prescribed in this section; any person, whose claim was not determined upon the hearing, may file a claim thereto, at any time before the expiration of a year from the return of the warrant; and, thereupon, the justice must proceed, as prescribed in this section with respect to a claim filed within the ten days.

§ 3094. *Id.; When no claim made within a year.*—If, at the expiration of one year after the return of the warrant, any portion of the surplus remains, a claim to which has not been established to the satisfaction of the justice, pursuant to the provisions of the last section, the justice must pay it, for the benefit of the poor, to the

Order upon claim for surplus; appeal therefrom.

officer to whom a fine or penalty is to be paid for the benefit of the poor, as prescribed in section 2875 of this act; and, thereupon, all persons are forever barred from any claim thereto. But if a claim, filed as prescribed in the last section, remains undetermined at the expiration of the year, the justice must determine it within ten days thereafter; and, for that purpose, he must retain the surplus in his hands until the determination.

§ 3095. *Order upon claim for surplus; appeal therefrom.*—An appeal from an order determining a claim, as prescribed in the last two sections, may be taken to the county court, by a claimant, within ten days after the making of the order, as from a judgment of a justice in an action to recover a sum equal to the claim; and the proceedings thereupon are the same, except that an undertaking is not necessary for any purpose. Upon such an appeal, each other claimant, whose interest is affected by the order appealed from, must be made a respondent. If there is no such claimant, the officer entitled to the surplus must be made respondent; but costs cannot be awarded against him, unless he appears upon the appeal; in which case, the costs are in the discretion of the appellate court. Where an appeal, taken as prescribed in this section, is perfected, the county judge may, in his discretion, make an order extending the time, within which payment of the surplus must be made, as prescribed in the last section, and staying payment accordingly. Unless such an order is made, and a copy thereof is served upon the justice, payment must be made as prescribed in the last section, notwithstanding the appeal; and upon proof of the payment, the appeal must be dismissed. Where an appeal is taken to the supreme court, from the determination of the county court, the county judge, or

Proceedings upon decision in favor of person answering.

a justice of the supreme court may make a like order, and with like effect.

§ 3096. *Proceedings upon decision in favor of person answering.*—If the decision of the justice, or the verdict of the jury, where the issues are tried by a jury, is in favor of the person answering, it must fix the value of each animal seized. If the justice or the jury find that the seizure was malicious, and without probable cause, the decision or verdict must assess the damages sustained by the person answering, by means of the seizure and detention. The justice must thereupon make a final order, awarding to the person so answering, the return of the animal or animals seized, or the value thereof if a return cannot be had; together with his costs, at the rates allowed by law in an action brought before him to recover a chattel; and, also, twice the sum assessed as his damages, if any. Thereupon a warrant must be issued by the justice to a constable, to the same effect, as an execution issued, in an action to recover a chattel, upon a judgment in favor of the defendant, where the chattel has not been delivered to him; and each provision of this chapter, relating to a judgment and an execution in such a case, applies to a final order made, and a warrant issued thereupon, as prescribed in this section.

§ 3097. *Demand of possession before trial; proceedings thereupon.*—At any time after the precept is issued, and before the commencement of the trial, the owner of any animal seized may file with the justice a written demand of the possession thereof. Thereupon he is entitled to the possession, upon complying with the following terms:

1. He must pay to the justice, for the use of the petitioner, the costs of the proceedings, to the time of filing

Id.; when animal wilfully set at large by third person.

the demand, as prescribed in subdivision first of section 3092 of this act, and, also, the sums payable on account of each animal, whereof possession is so demanded, as prescribed in subdivision third of the same section; which sums must be fixed by the justice, after hearing the allegations and proofs of the parties.

2. He must also pay to the justice, a fee of one dollar for each animal, whereof possession is so demanded.

3. If the petitioner is an officer, to whom a fine or penalty is to be paid for the benefit of the poor, as prescribed in section 2875 of this act, the claimant must also pay to the justice, for the petitioner's use, the sum specified therein on account of each animal, whereof possession is so demanded.

4. The claimant must also prove, to the satisfaction of the justice, by affidavit or other competent evidence, that he is the owner of each animal, whereof possession is so demanded. Each person who has appeared must have notice of, and may oppose, the claim.

§ 3098. *Id.; when animal wilfully set at large by third person.*—But where, in a case specified in the last section, the person filing a demand, presents therewith to the justice sufficient proof, by affidavit or otherwise, that the running at large, herding, pasturing, or trespassing, by reason whereof the animal or animals, of which he demands possession, were seized, was caused by the wilful act, intended to effect that object, of a person other than the owner; and also makes the proof specified in subdivision fourth of that section, he is entitled to possession, pursuant to his demand, upon paying to the petitioner, or to the justice for his use, a reasonable sum, to be fixed by the justice, after hearing the allegations and proof, of the parties, as compensation for the care and keeping of the animal or animals, whereof possession is so demanded,

Action by owner in such a case.

and without paying any other sum, specified in the last section.

§ 3099. *Action by owner in such a case.*—The owner of an animal, seized in consequence of a wilful act specified in the last section, may recover, in an action against the person who committed it, all damages sustained by him, in consequence thereof, including the sum paid in order to recover possession of the animal, as prescribed in the last section; and, in addition thereto, the sum of twenty dollars for each animal seized.

§ 3100. *Action by petitioner and by officer.*—Where the possession of an animal has been delivered, as prescribed in the last section but one, an action may also be maintained, by the petitioner in the special proceeding before the justice, against the person who committed the wilful act, to recover, in addition to all other damages sustained by the plaintiff in consequence of the wilful act, all sums, to which the plaintiff would have been entitled out of the proceeds of the sale, as prescribed in section 3092 of this act, other than the compensation paid for the care and keeping of the animal. In the like case, if the petitioner is a private person, the officer, to whom a fine or penalty is to be paid for the benefit of the poor, as prescribed in section 2875 of this act, may maintain an action against the person, who committed the wilful act, to recover the penalties to which the plaintiff would have been entitled, out of the proceeds of the sale, as prescribed in that subdivision. Neither of the actions specified in this or the last section is affected by the pendency of, or the recovery of judgment in, either of the others.

§ 3101. *Demand of possession after final order and before sale.*—A person, entitled to demand the pos-

Order upon demand of possession; appeal therefrom.

session of an animal, as prescribed in section 3097 of this act, who did not appear upon the return of the precept, or upon the trial, may file, with the justice, a written demand of the possession, at any time after the final order, and not less than three days before the time appointed for the sale; and, thereupon, he is entitled to the possession, upon complying with the following terms:

1. He must furnish, by affidavit or other competent evidence, a sufficient excuse, to the satisfaction of the justice, for his failure to appear.
2. He must, in all respects, comply with the provisions of section 3097 of this act; except that it is necessary for him to pay only one-half of the justice's fee, as prescribed in subdivision second of that section; and one-half of the fees payable to the petitioner, for the seizure of each animal, as prescribed in subdivision third of section 3092 of this act.

§ 3102. *Order upon demand of possession; appeal therefrom.*—Where a demand for the return of the possession of an animal is filed, as prescribed in either of the last five sections, the justice must, at the request of either party thereto, make, and enter in his minutes, an order determining the same. An appeal from such an order may be taken to the county court, by the person making the demand, or by either party to the special proceeding, at any time before the final order in the special proceeding is made; and each person or party so entitled to appeal, must be made a respondent upon an appeal taken by one of the others. The appeal must be taken in like manner, as an appeal from a judgment of the justice in an action to recover a chattel; and the proceedings thereupon are the same, except as otherwise prescribed in the next section.

§ 3103. *Id.; stay of proceedings.*—An appeal from

Appeal from final order.

an order, specified in the last section, is not effectual for any purpose, unless the appellant procures from the county judge an order, directing a stay of the proceedings upon the petition, and a stay of the execution of the order appealed from, and files it with the justice, within the time allowed for the appeal. The order may be granted or refused, in the discretion of the county judge, or granted upon such terms, as to security or otherwise, as he thinks proper; and it may be vacated or modified, either absolutely, or unless further security is given, in his discretion.

§ 3104. *Appeal from final order.*—Within ten days after a final order upon a petition is made, as prescribed in this title, an appeal therefrom may be taken by the petitioner, or by the person answering, in like manner as an appeal from a judgment of the justice in an action to recover a sum of money, equal to the value of the animal or animals, and the proceedings thereupon are the same, except as otherwise prescribed in the next section.

§ 3105. *Id.; by claimant; stay of proceedings and delivery of possession.*—An appeal from a final order, taken, as prescribed in the last section, by the person answering, is not effectual for any purpose, unless the appellant files, with the notice of appeal, an order of the county judge, or, if he is absent from the county, of a justice of the supreme court, reciting that the appeal has been perfected, and that security has been given thereupon, as prescribed in this section, and directing a stay of proceedings upon the final order appealed from, and that the possession of the animal or animals seized be delivered to the appellant. The order can be made only where an undertaking is given by the appellant, as required for the purpose of perfecting an appeal from a judgment, and staying the execution thereof; and also an undertaking, in the same

Proceedings upon affirmance.

or another instrument, to the effect that, if the final order appealed from is affirmed, or if the appeal is dismissed, the appellant will pay all sums which the justice awards against him, upon the hearing after the determination of the appeal, as prescribed in the next section, not exceeding a sum specified therein; which must be, at least, twice the amount of all the sums, which might be deducted from the proceeds of the sale, as prescribed in section 3092 of this act. The sum must be fixed, and the undertaking must be approved, by the judge who grants the order. Upon filing the order with the justice, the appellant is forthwith entitled to the possession of the animal or animals seized.

§ 3106. *Proceedings upon affirmation.*—If the final order appealed from is affirmed, upon an appeal taken by the person answering, the county court must appoint a time and place, at which the justice must fix the sums payable by the appellant, pursuant to his undertaking. The justice may adjourn the hearing to another place, and to another time, not exceeding three days after the time so appointed. The justice must fix the sum so payable, as if a warrant for the sale of the animals seized had been returned, and the proceeds thereof paid to him by the constable, as prescribed in section 3092 of this act. The undertaking upon the appeal enures to the benefit of each officer, to whom any sum is payable, as prescribed in that section; and with respect to any of those sums, the respondent is a trustee for the officer entitled thereto.

§ 3107. *Limitation of action for seizing animals.*—Where an animal is seized, upon the ground that it was running at large, or was being herded or pastured, or was trespassing, contrary to the provisions of this title; and the officer or other person making the seizure, immediately

Certain actions can not be maintained.

files his petition, and diligently prosecutes the same, as prescribed in this title; an action to recover the animal so seized, or to recover damages for the seizure, or for any act subsequent thereto, must be commenced within one year after the cause of action accrues.

§ 3108. *Certain actions can not be maintained.*—A person, to whom the precept was directed by his name, and who was personally served therewith, or a person who has appeared and answered in the special proceeding, or demanded the return of any animal seized, can not maintain an action against the officer or other person seizing an animal, or a person acting by his command, or in his aid, in a case specified in the last section. But, except as specified in this section, the owner of an animal seized or detained, under color of any provision of this title, may maintain an action to recover the animal, or its value, or damages, for the seizure or detention, or for any unlawful act subsequent thereto, if, in fact, the animal was not, at the time of the seizure, running at large, or being herded or pastured, or trespassing, as the case may be, as specified in the foregoing provisions of this title.

§ 3109. *Where several animals are trespassing, damages are entire. Proceedings in such cases.*—For the purpose of determining the damages sustained by the petitioner, where two or more animals are found simultaneously trespassing upon real property, owned or occupied by him, all the damage done by all the animals seized, is to be regarded as done by them jointly; and the petitioner's remedy therefor is entire, and must be enforced against all the animals, and the proceeds of the sale thereof. Where different persons, who are known, own different animals seized, the precept must be directed to all of them by their names. If one or more of the owners are known,

Proceedings in other cases, where there are different owners.

and the others are unknown, and can not be ascertained with reasonable diligence, the precept must be directed to each known owner, by his name, and, also generally to all persons having an interest in those animals, the owners of which are unknown. In a case specified in this section, a demand of the possession of an animal seized can not be made, as prescribed in section 3097 or 3101 of this act, unless it is made with respect to all the animals seized, and by persons entitled to the possession of all of them. But a separate demand may be made, as prescribed in section 3098 of this act, by each owner of one or more animals seized; in which case, if possession is delivered to him, as prescribed in that section, the petitioner's remedy for his damage is the same, with respect to the animal or animals, of which possession is not so delivered, and against the proceeds of the sale thereof, as if those, whereof possession is so delivered, had not been trespassing upon the property.

§ 3110. *Proceedings in other cases, where there are different owners.*—Where the petitioner does not allege, that the animals seized, were trespassing upon real property owned or occupied by him, and different persons own different animals seized, a seperate special proceeding may be instituted, as prescribed in this title, against each owner, or against any two or more owners, with respect to the animals owned by him or them. Or the proceedings may be taken against all the owners jointly; in which case, each person to whom the precept is directed by his name, and each person having an interest in an animal seized, has the same right to demand the possession of the animal owned by him, and the same right to answer separately, as if the special proceeding was against him separately; and the final order may be in favor of one or more of the persons so answering, with respect to the animal or animals owned by him or them, and for his or their costs;

Surplus where there are different owners.

and against the remainder of the persons answering, or to whom the precept was directed, or for the sale of the remainder of the animals, in like manner, as if the former persons had not answered, or had not been named in the precept. But the person, first making a demand of the possession of any animal seized, must pay all the costs to the time of the demand; and a person, subsequently making a demand, is excused from the payment of any costs, except those which have accrued since the former demand.

§ 3111. *Surplus where there are different owners.*

—Where proceedings are taken jointly against different persons, who own different animals seized, as prescribed in either of the last two sections, the surplus, remaining in the justice's hands, must be distributed between them, in proportion to the value of the animals owned by each, to be determined by the justice. Any owner may claim separately his proportion of the surplus; and sections 3093 and 3094 of this act apply to a claim made, and to the disposition of the surplus arising, as prescribed in this section.

§ 3112. *When one action, etc., supersedes any other.*

—Where two or more persons, or an officer and a private person, are authorized, by this title, to bring an action, or to seize an animal, and take the proceedings prescribed in this title for the disposition thereof, the commencement of an action, or the seizure of the animal, by either of them, supersedes the right of any of the others to bring such an action, or to make such a seizure, with respect to the animal seized, or in question in the action. But the justice may, in his discretion, allow an officer or other person who is interested in the recovery, or in the application of the proceeds of the sale, to appear in the action or special proceeding, for the purpose of protecting his interest, and

Rights of officer when private person fails to prosecute.

to take such part in the proceedings therein as the justice thinks proper.

§ 3113. *Rights of officer when private person fails to prosecute.*—Where a seizure is made by a private person, as prescribed in this title, and the possession of an animal seized is abandoned by him, without filing a petition; or where an action, brought by a private person, as prescribed in this title, is settled or discontinued by the plaintiff; the officer, to whom a penalty is payable, as prescribed in section 3083 of this act, or in subdivision fourth of section 3092 of this act, may, unless he has assented to the abandonment, settlement, or discontinuance, maintain an action against the owner of the animal in question, to recover the penalty so payable to him; and, upon proof of the facts, which would have entitled the plaintiff in the former action, or the petitioner in the special proceeding, to recover, he is entitled to judgment accordingly.

§ 3114. *Person having a special property deemed owner.*—Where a person is, at the time of the seizure, entitled to the possession of an animal, as against the general owner thereof, by virtue of a special property therein, he is deemed, for all the purposes of this title, the owner thereof.

§ 3115. *Agent may act for his principal.*—The duly authorized agent of the owner or person entitled to the possession of an animal, as specified in the last section, may, in his own name, answer, make any demand, or take any other proceeding, which the owner or person so entitled may take, as prescribed in this title.

County law.

COUNTY LAW.

§ 12. *General powers.*—The board of supervisors shall:

7. Make such laws and regulations as they may deem necessary for the destruction of wild and noxious animals and weeds, within the county.

(§§ 60-80 do not apply to bridges on the Hudson River below Waterford or on the East River, or on waters forming boundaries of the State.)

§ 61. *County highways and bridges.*—A board of supervisors shall, on the application of twenty-five resident tax-payers, when satisfied that it is for the interest of the county, lay out, open, alter, or discontinue a county highway therein, or cause the same to be done, and construct, repair, or abandon a county bridge therein, or cause the same to be done, when the board shall deem the authority conferred on commissioners of highways insufficient for that purpose, or that the interests of the county will be promoted thereby. All expenses so incurred shall be a county charge. Such powers shall not be exercised unless the applicants therefor shall prove to the board the service of a written notice, personally or by mail, on a commissioner of highways of each town in the county, at least twelve days prior to the presentation of such application, specifying therein the object thereof; and when the application is to lay out a highway, or construct a bridge, the route or location thereof; and in all other cases, a designation of the highway or bridge to be affected thereby.

Location and construction of bridges.

§ 62. *Location and construction of bridges.*—The board may authorize the location, change of location and construction of any bridge, applied for by any town or towns, jointly, or by other than a municipal corporation, created under a general law, or by any corporation or individual for private purposes; and if a public bridge, erected other than by a municipal corporation, establish the rates of toll for crossing such bridge; but if such bridge is to cross a navigable stream, provision shall be made in the resolution or permission authorizing the same, for the erection and maintenance of a suitable draw, to prevent any obstruction of the navigation of such stream; and if a private bridge, provision shall be made that the draw shall be kept open as may be required to permit all vessels to pass without loss of headway. When such bridge shall be intersected by the line of counties, the action of the board of supervisors of each county shall be necessary to give the jurisdiction herein permitted. But this section shall not apply to a pier bridge erected or to be erected over the Mohawk river above the state dam by a corporation organized under the transportation corporations law, provided such corporation shall comply with all the provisions of said transportation corporations law applicable thereto; such a corporation, without further proceeding, shall have the right to erect and maintain piers in said river for the purposes of such a bridge.

Amended by L. 1895, ch. 225.

§ 63. *County aid to towns for the construction and repair of bridges.*—If the board of supervisors of any county shall deem any town in the county to be unreasonably burdened by its expenses for the construction and repair of its bridges, the board may cause a sum of money, not exceeding two thousand dollars in any one year, to be

Construction by county of destroyed bridges.

raised by the county and paid to such town to aid in defraying such expenses.

§ 64. *Construction by county of destroyed bridges.*

—If any bridge within a county, or intersected by any boundary line of a county, shall be destroyed by the elements, and the board of supervisors of the county shall deem that the expenses of the construction of a new bridge at or near the site of the bridge so destroyed would be too burdensome upon the town or towns within such county, which would otherwise be liable therefor, the board of supervisors of any such county may provide for the construction and completion of a bridge and all necessary approaches thereto, at or near the site of the bridge so destroyed. If the bridge so destroyed shall have been constructed by a corporation created under a general law, and the site thereof, and of the approaches thereto, or either, shall be the property of such corporation, such board of supervisors may purchase the interest of such corporation, or any other person, in such site or approaches, if such purchase can be accomplished upon reasonable terms; but if such site or approaches can not be lawfully acquired by such purchase, or otherwise, upon reasonable terms, such board may acquire title to premises on either side of such site, and provide for the construction of a bridge and approaches thereto, at such place, at the expense of the county, or of the two counties jointly, as the case may be, provided such bridge shall be so located as not to increase the distance to be traveled upon the highway to reach each end of such bridge more than five rods. Any board of supervisors providing for the construction of any such bridge may determine by resolution whether the expenses of the maintenance and repair thereof shall thereafter be a county charge, or a charge upon such town or towns.

Apportionment of expenses.

§ 65. *Apportionment of expenses when a bridge is intersected by town or county lines.*—If any public free bridge, intersected by the boundary line of a county, shall also be intersected by the boundary line of two or more towns in such county, the board of supervisors of such county shall apportion as it shall deem equitable, between such towns, their respective shares of the expenses of the construction, maintenance and repair of such bridge, and the amount to be received by each town, of the money raised by the county to be paid toward defraying the expenses of constructing and repairing such bridge.

§ 66. *County's share of expenses to be raised and paid to the commissioners of highways of the towns.*—The board of supervisors shall cause to be raised and collected the amount to be paid by the county to any town toward the expenses of a bridge and when collected the same shall be paid to the commissioners of highways of the town, to be applied by them toward the payment of such expenses.

§ 67. *May authorize a town to construct a bridge outside of a boundary line.*—The board of supervisors of any county may authorize any town, on a vote of a majority of the electors thereof voting at a regular town meeting, to appropriate a sum, or pledge its credit, to aid in, or wholly construct and maintain a bridge outside the boundaries of the town or county, or from or within the boundary line of any town into another town or county, but forming a continuation of highways leading from such town or county, and deemed necessary for the public convenience.

§ 68. *Bridges over county lines.*—The board shall provide for the care, maintenance, preservation and repair

Bridges over county lines.

of any draw or other bridge intersecting the boundary line of counties or towns, and which bridge is by law a joint charge on such counties or towns, or on the towns in which it is situated; and to severally apportion, as it may deem equitable, the expense thereof on the towns respectively liable therefor, or on the respective counties when liable; but when such bridge shall span any portion of the navigable tide-waters of this state, forming, at the point of crossing, the boundary line between two counties, such expense shall be a joint and equal charge upon the two counties in which the bridge is situated, and the board of supervisors in each of such counties shall apportion such expense among the several towns and cities in their respective counties, or upon any or either of such towns and cities, as in their judgment may seem proper; and if there be in either of said counties, a city, the boundaries of which are the same as the boundaries of the county, then it shall be the duty of the common council of such city, to perform the duty hereby imposed upon the boards of superivsors; but no town or city not immediately adjacent to such waters, at the points spanned by said bridge, shall be liable for a larger proportion of such expense than the taxable property of such town or city bears to the whole amount of taxable property of such county. The board of supervisors of such counties or in any city embracing the entire county, and having no board of superivsors, the common council shall have full control of such bridges. No such bridge shall be constructed unless the board of superivsors in each of such counties, and the common council of the city whose boundaries are the same as the boundary of the other county adjacent to such waters, shall first by resolution determine that such bridge is necessary for public convenience, in which case such common conncil, with the consent of the mayor, may authorize the issue of bonds for the purpose of construct-

Authorize towns to borrow money.

ing such bridge, to be issued as other bonds are issued in said city. Whenever any bridge now spanning any such navigable tide-waters or hereafter erected across any such navigable tide-waters shall be condemned by the United States authorities as an obstruction to navigation, and shall be ordered removed, the county and city authorities having charge of such bridge, if they shall determine that such bridge shall be rebuilt, shall, as soon as practicable after such determination, cause plans to be prepared for the erection of the new bridge and the removal of any bridge so condemned as aforesaid, and within a reasonable time after the approval of any such plans by the United States authorities, the proper officers shall proceed with the construction of said new bridge. In case of any unreasonable delay on the part of the officer or officers charged with the duty of construction of such new bridge, such duty may be enforced by mandamus upon the application of any citizen interested in its performance.

Amended by L. 1896, ch. 995.

§ 69. *Authorize towns to borrow money.*—The board may, upon the application of any town liable or to be made liable to taxation in whole or in part for constructing, building, repairing or discontinuing any highway or bridge therein or upon its borders, pursuant to a vote of a majority of the electors of any such town at an annual town meeting, or special town meeting, called for that purpose, or upon the written request of the commissioners of highways and town board of such town or towns, authorize such town or towns to construct, build, repair or discontinue such highway or bridge, and to borrow such sums of money for and on the credit of such town or towns, as may be necessary for that purpose, and to lay out, widen, grade, discontinue or macadamize such high-

The raising and expenditure of moneys.

way, or to purchase for public use any plankroad, turnpike, tollroad or tollbridge in such town or towns, and may authorize the company owning the same to sell the same, or any part thereof or the franchises thereof, or to pay any debt incurred in good faith by or in behalf of such town or towns for such purposes. If such highway or bridge shall be situated in two or more towns in the same county, the board shall apportion the expenses among such towns in such proportion as shall be just. But in the county of Queens a vote of a majority of the electors of any such town or towns, voting at an annual town meeting, or special town meeting called for that purpose, must first be obtained before the board can authorize such town or towns to borrow any money for, or on the faith and credit of such town or towns for the purpose above mentioned.

Amended by L. 1894, ch. 163, and by L. 1896, ch. 178.

§ 70. *The raising and expenditure of moneys.*— The board shall, from time to time, impose upon the taxable property of such towns sufficient tax to pay such obligations as they shall become due. The supervisor and town clerk shall each keep a record, showing the date and amount of the obligations issued, the time and place of their payment, and the rate of interest thereon. The obligations shall be delivered to the supervisor of the town, who shall dispose of the same for not less than par, and pay the proceeds thereof to the commissioners of highways of the town, or to such other officer as shall be designated by the board of supervisors, to be used by them for the purposes for which the same were appropriated; but not more than five hundred dollars of such proceeds shall be expended upon any highway or bridge, except in pursuance of a contract made by a contractor with the

Streets outside of city limits.

commissioners of highways of the town, or other officer designated by the board of supervisors, and approved by the town board, no member of which shall be interested therein. If such highway or bridge shall be wholly or partly within the limits of an incorporated village, the consent of a majority of the trustees of such village shall be necessary for the action of the board of supervisors as herein provided.

§ 71. *Streets outside of city limits.*—When any territory in a county containing an incorporated city of one hundred thousand inhabitants, excepting the towns of Flatbush and New Lots in the county of Kings, has been mapped into streets and avenues, pursuant to law, the board of supervisors may authorize the establishment of a plan for the grade of such streets and avenues, laying out, opening, grading, constructing, closing and change of line of any one or more of them, and provide for the assessment on property intended to be benefited thereby, and fixing assessment districts therefor, and of the levy, collection and payment of the amount of damages sustained and the charges and expenses incurred, or which may be necessary to incur in carrying out such provisions, but such last named power in regard to laying out, opening, grading, constructing and change of line, of such streets or avenues or defraying the expenses thereof, shall only be exercised on the petition of the property owners, who own more than one-half of the frontage on any such street or avenue, or on a certificate of the town board and commissioners of highways of the town, that the same is, in their judgment, proper and necessary for the public interest. If the streets and avenues, in respect to which such action is proposed to be taken, shall lie in two or more towns, a like certificate shall be required of the town board and commissioners of highways of each town.

Survey and records of highways.

Before making such certificate, such town board, or boards and commissioners of highways, shall give ten days' notice by publication in one of the daily papers of the county, and by conspicuously posting in six public places in each of such towns, of the time and place at which they will meet to consider the same, at which meeting the public, and all persons interested, may appear and be heard in relation thereto. No such street or avenue shall be laid out, opened or constructed, upon or across any lands acquired by the right of eminent domain, and held in fee for depot purposes by any railroad corporation, or upon or across any lands now held by a corporation formed for the purpose of improving the breed of horses, without the consent of such corporations. No town officer shall charge anything for his services under this section, nor shall any charge be made against any such town or the property therein, for the expense of the publication of the notice herein required.

§ 72. *Survey and records of highways.*—The board may authorize and direct the commissioners of highways of any town, to cause a survey to be made, at the expense of the town, or* any or all of the highways therein, and to make or complete a systematic record thereof, or to revise, collate and rearrange existing records of highways, and correct and verify the same by new surveys and to establish the location of highways by suitable monuments. Such records so made, or revised, corrected and verified shall be deposited with the town clerk of the town, and shall thereafter be the lawful records of the highways which they describe; but shall not affect rights pending in any judicial proceeding commenced before the deposit of such revised records with the town clerk.

* So in the original.

Regulation of toll rates.

§ 73. *Regulation of toll rates.*—Such boards shall have power, by a vote of two-thirds of all the members elected to authorize an alteration, reduction or change of the rates of toll charged or received by any turnpike, plank or gravel road, or other toll road within such county, or by any bridge company or ferry within such county, or, if within more than one county, then by joint action with the supervisors of such counties, provided such alteration shall be asked for by the directors, trustees or owners of such road, bridge or ferry; but that no increase of toll shall be so authorized unless notice of intention to apply for such increase shall have been published in each of the newspapers published in such county, once in each week for six successive weeks next before the annual election of supervisors in such county; and any alteration in rates of toll authorized by any board of supervisors may be changed or modified by any subsequent board, on their own motion, by a like vote of two-thirds of all the members elected to such board; but nothing herein contained shall affect or abridge the powers of any city.

§ 74. *Highways in counties of more than 300,000 acres of unimproved land.*—The board may establish separate highway districts in counties containing more than three hundred thousand acres of unimproved unoccupied forest lands, for the purpose of constructing highways through such lands; such highway districts to be established upon the application of the owners of more than one-half of the non-resident lands therein. Any such highway district shall consist of contiguous tracts or parcels of land, and may include parts of one or more towns; and they may be changed, altered or abolished at any time by the board. Such board may appoint one or more commission-

* So in the original.

Appropriation of non-resident taxes.

ers to lay out and construct such highways in any such district, and prescribe the powers and duties, and direct the manner in which highway taxes shall be assessed, levied and collected upon the lands within the district, and the manner of expenditure thereof.

They may also authorize such commissioners to borrow money on such terms as they may deem just, but not exceeding the amount of ten years' highway taxes upon such lands; and may, for the purpose of repaying such loan, set apart and appropriate the highway taxes upon such lands, for a period not exceeding ten years from the time of making such loan.

§ 75. *Appropriation of certain non-resident highway taxes.*—The board may, upon the application of the owners representing a majority in value, as shall be ascertained from the last annual assessment-roll of the real estate lying along the line of any highway, laid out through unimproved lands, in the cases not provided for in the last preceding section authorize the appropriation of the non-resident highway tax on the lands lying along such line, for the improvement of such highways.

§ 76. *Balance of state appropriations.*—The board may direct the expenditure of any non-resident highway or bridge tax, set apart by an act of the legislature, in counties wherein such non-resident lands are situated, when the official life of commissioners appointed to receive and expend such taxes has expired.

§ 77. *Alteration of state roads.*—The board may authorize the commissioners of highways of any town in their county to alter or discontinue any road or highway therein, which shall have been laid out by the state under

Powers in certain counties.

the same conditions that would govern their actions in relation to highways that have been laid out by local authorities.

§ 78. ***Further powers.***—The board may make such other local and private laws and regulations concerning highways, alleys, bridges and ferries within the county, and the assessment and apportionment of highway labor or taxes therefor, not inconsistent with law, as it may deem necessary and proper, when the purposes of such laws and regulations can not be accomplished under the foregoing provisions, or general laws of the state.

§ 79. ***Powers in certain counties.***—In counties wherein the aggregate amount of money expended by the county and towns within the county, for the improvement of public roads by macadamizing or paving, exceeds the sum of five hundred thousand dollars, the board of supervisors may enact local and private laws regulating the width of tires on wagons built to carry a weight of twenty-five hundred pounds or upwards, and may provide penalties for the violation thereof, provided, however, that such local laws shall not apply to pleasure vehicles, or carriages, or to wagons coming from adjacent cities or counties, nor to any city within the county.

Added by L. 1894, ch. 644.

§ 80. Boards of supervisors shall have power to provide for the use of abandoned turnpike, plank or macadamized roads within any town as public highways; but jurisdiction in such a case shall not be exercised without the assent of two-thirds of all the members elected to such board, to be determined by yeas and nays, which shall be entered on its minutes.

Added by L. 1895, ch. 756.

Town law.

TOWN LAW.

§ 12. *Election of officers.*—There shall be elected at the biennial town meeting in each town by ballot, . . . one, or three commissioners of highways, . . . At town meetings held at the same time as general elections, the names of all candidates for town offices shall be voted for in the same manner and on the same ballot as candidates for other offices voted for thereat. At such town meetings no person shall be allowed to vote for candidates for town offices who is not registered and entitled to vote at such general election.

Amended by L. 1893, ch. 344, by L. 1897, ch. 481, and by L. 1898, ch. 363.

See L. 1898, ch. 474, *post*, as to the election of highway commissioners in the years 1898, 1899, 1900 and thereafter.

§ 13. *Term of office.*— . . . commissioners of highways, . . . when elected, shall hold their respective offices for two years. But whenever there is or shall be a change in the time of holding town meetings in any town, persons elected to such offices at the next biennial town meeting after such change shall take effect, shall enter upon the discharge of their duties at the expiration of the term of their predecessors, and serve until the next biennial town meeting thereafter or until their successors are elected and have qualified. Whenever the time for holding town meetings in any town is changed to the first Tuesday after the first Monday in November, the town officers elected thereat shall take office on the first day of January succeeding their election.

Amended by L. 1893, ch. 344, by L. 1897, ch. 481, and by L. 1898, ch. 363.

§ 15. *Commissioners of highways.*—The electors of each town may, at their biennial town meetings, deter-

Fence viewers.

mine by ballot whether there shall be elected in their town one or three commissioners of highways. Whenever any town shall have determined upon having three commissioners of highways and shall desire to have but one, the electors thereof may do so by a vote by ballot taken at a biennial town meeting, and when such proposition shall have been adopted no other commissioner shall be elected or appointed until the term or terms of those in office at the time of adopting the proposition shall expire or become vacant; and they may act until their terms shall severally expire or become vacant as fully as if three continued in office. When there shall be but one commissioner of highways in any town, he shall possess all the powers and discharge all the duties of commissioners of highways as prescribed by law.

Amended by L. 1895, ch. 239, and by L. 1897, ch. 481.

§ 21. **Fence viewers.**—The assessors and commissioners of highways elected in every town shall, by virtue of their offices, be fence viewers of their town.

Renumbered by L. 1897, ch. 481.

§ 22. **Powers of biennial town meetings.**—The electors of each town may, at their biennial town meeting:

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5. Make provisions and allow rewards for the destruction of noxious weeds and animals, as they may deem necessary, and raise money therefor.

Amended by L. 1897, ch. 481.

§ 23. **Special town meetings.**—Special town meetings shall also be held whenever twenty-five taxpayers upon the last town assessment-roll shall, by written application addressed to the town clerk require a special town meeting to be called, for the purpose of raising money for the support of the poor; or to vote upon the question of raising and

Electors in incorporated village not to vote on highway questions.

appropriating money for the construction and maintenance of any bridges which the town may be authorized by law to erect or maintain; or for the purpose of determining in regard to the prosecution or defense of actions, or the raising of money therefor; or to vote upon any proposition which might have been determined by the electors of the town at the last annual town meeting, but was not acted upon thereat; or to vote upon or determine any question, proposition or resolution which may lawfully be voted upon or determined at a special town meeting. Special town meetings may also be held upon the like application of the supervisor, commissioners of highways, or overseers of the poor, to determine questions pertaining to their respective duties as such officers, and which the electors of a town have a right to determine. An application and notice heretofore made and given for a special town meeting to be hereafter held for a purpose not heretofore authorized by law, but now authorized by law, shall be as valid and of the same force and effect as if such purpose had been authorized by law at the time of such application and notice.

Amended by L. 1894, ch. 280.

§ 36. *Balloting; electors in incorporated village when not to vote on highway questions.*—When the electors vote by ballot, except in towns where the biennial town meetings are held at the time of general elections, all the officers voted for shall be named in one ballot, which shall contain written or printed, or partly written or partly printed, the names of the persons voted for, and the offices to which such persons are intending to be elected, and shall be delivered to the presiding officers so folded as to conceal the contents, and shall be deposited by such officers in a box to be constructed, kept and disposed of, as near as may be, in the

Oath of office.

manner prescribed in the general election law. When any town shall have within its limits an incorporated village, constituting a separate road district, exempt from the supervision and control of the commissioners of highways of the town, and from payment of any tax for the salary or fees of said commissioners, and from payment of any tax for the opening, erection, maintenance and repair of any highway or bridge of said town, without the limits of said village, no residents of such village shall vote at any biennial or special election in such town for any commissioner of highways for said town, nor for or against any appropriation for the opening, laying out, maintenance, erection or repair of any highway or bridge in said town, without the limits of said village. At the biennial elections in such towns, the names of candidates for the office of highway commissioner shall be printed on a different ballot from the one containing the names of candidates for other town offices. Such ballots shall be indorsed "commissioner of highways," and shall be deposited, when voted, in a separate ballot box, which also shall be marked "commissioner of highways." Such ballots and ballot box shall be furnished by the officers now charged by law with that duty at town elections. A poll list shall be kept by the clerk of the meeting on which shall be entered the name of each person voting by ballot.

Amended by L. 1895, ch. 262, by L. 1897, ch. 481, and by L. 1898, ch. 362.

§ 51. *Oath of office.*—Every person elected or appointed to any town office, except justice of the peace, shall before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, take and subscribe before some officer authorized by law to administer oaths in his county, the constitutional oath of office, and such other oath as may be required by law, which shall be administered and certi-

Refusal to serve as overseer of highways.

fied by the officer taking the same without reward, and shall within eight days be filed in the office of the town clerk, which shall be deemed an acceptance of the office; and a neglect or omission to take and file such oath, or a neglect to execute and file, within the time required by law, any official bond or undertaking, shall be deemed a refusal to serve, and the office may be filled as in case of vacancy.

§ 55. *Refusal to serve as overseer of highways or pound-master.*—If any person chosen or appointed to the office of overseer of highways or pound-master shall refuse to serve, he shall forfeit to the town the sum of ten dollars.

§ 56. *Town officers to administer oaths.*—Any town officer may administer any necessary oath in any matter or proceeding lawfully before him, or to any paper to be filed with him as such officer.

§ 63. *Undertaking of commissioner of highways.*—Every commissioner of highways shall, within ten days after notice of his election or appointment, execute an undertaking with two or more sureties, to be approved by the supervisor of his town, to the effect that he will faithfully discharge his duties as such commissioner, and within ten days after the expiration of his term of office, pay over to his successor all moneys remaining in his hands as such commissioner, and render to such successor a true account of all moneys received and paid out by him as such commissioner, which undertaking shall be delivered to the supervisor, and filed by him in the office of the town clerk within ten days thereafter.

Resignation of town officers.

§ 64. *Resignation of town officers.*—Any three justices of the peace of a town may, for sufficient cause shown to them accept the resignation of any town officer of their town; and whenever they shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town.

§ 65. *Filling of vacancies.*—When a vacancy shall occur or exist in any town office, the town board or a majority of them may, by an instrument under their hands and seals, appoint a suitable person to fill the vacancy, and the person appointed, except justices of the peace, shall hold the office until the next biennial town meeting. . . . The board making the appointment shall cause the same to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed. . . .

§ 66. *Form of undertaking, and liability thereon.*—Every undertaking of a town officer, as provided by this chapter or otherwise, must be executed by such officer and his sureties and acknowledged or proven and certified in like manner as deeds to be recorded, and the approval indorsed thereon. The parties executing such undertaking shall be jointly and severally liable, regardless of its form in that respect, for the damages to any person or party by reason of a breach of its terms.

§ 80. *General duties of supervisor.*—The supervisor of each town shall:

1. Receive and pay over all moneys raised therein for defraying town charges, except those raised for the support of highways and bridges, and of the poor.
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Fires in woods.

§ 82. ***Fires in woods.***—Whenever the woods in any town shall be on fire, it shall be the duty of the justices of the peace, the supervisor and commissioners of highways of such town, and of each of them, to order such and so many of the inhabitants of such town liable to work on the highways, and residing in the vicinity of the fire, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same, or in stopping its progress.

§ 84. ***Delivery of books and papers by outgoing officer to successor.***—Whenever the term of office of any supervisor, town clerk, commissioner of highways or overseer of the poor shall expire, or when either of such officers shall resign, and another person shall be elected or appointed to the office, the succeeding officer shall, immediately after he shall have entered on the duties of his office, demand of his predecessor all the records, books and papers under his control belonging to such office. Every person so going out of office, whenever so required, shall deliver upon oath to his successor all the records, books and papers in his possession or under his control belonging to the office held by him, which oath may be administered by the officer to whom such delivery shall be made, and shall, at the same time pay over to his successor the moneys belonging to the town remaining in his hands. If any such officers shall have died, the successors or successor of such officer shall make such demand of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon the like oath, all records, books and papers in their possession, or under their control, belonging to the office held by their testator or intestate. If any person so going out of office, or his executors or administrators, shall refuse or neglect, when lawfully required, to deliver such records, books or papers,

Meeting of town board for receiving accounts.

he shall forfeit to the town, for every such refusal or neglect, the sum of two hundred and fifty dollars; and officers entitled to demand such records, books and papers may compel the delivery thereof in the manner prescribed by law.

§ 161. *Meeting of town board for receiving accounts of town officers.*—At the meeting of the town board held on the Tuesday preceding the biennial town meeting and on the corresponding date in each alternate year, or on the third Tuesday of December in each year, all town officers who receive or disburse any moneys of the town, shall account with the board for all such moneys received and disbursed by them by virtue of their office, but no member of the board shall sit as a member of the board when any account in which he is interested is being audited by the board. The board shall make a statement of such accounts, and append thereto a certificate, signed by at least a majority of them, showing the state of the accounts of each officer at the date of the certificate, which statement and certificate shall be filed with the town clerk of the town, and be open to public inspection during the office hours of such town clerk.

Amended by L. 1897, ch. 481, and by L. 1898, ch. 363.

§ 171. *Town fire companies.*—The town board of any town may appoint in writing, any number of inhabitants of their town, which they may deem necessary, to be a fire company for the extinguishment of fires in their town; but no such company, as herein provided, shall be formed in any incorporated city or village. Each fire company, thus formed, shall choose a captain and clerk thereof, and may establish such by-laws and regulations as may be necessary to enforce the performance, by such firemen, of their duty, and may impose such penalties, not exceeding five dollars for each offense, as may be necessary for that

Town fire companies.

purpose. Such penalties may be collected by and in the name of the captains, in any court having cognizance thereof, and, when collected, shall be expended by the companies for the repair and preservation of their engines and apparatus. All vacancies which may, at any time, happen in such companies by death, resignation or otherwise, shall, from time to time, be filled by the town board. The electors of any highway district, in which any town fire company shall have their headquarters, at a special meeting lawfully called by the town clerk, who is hereby authorized to call such special meeting may vote, by ballot, a sum of money, not exceeding four thousand dollars, for the purchase of a fire engine and apparatus, and for the purchase or lease of suitable buildings and grounds for keeping and storing such fire engine and apparatus and other property of said highway district. And whenever said electors shall so vote said money for the purchase of a fire engine and apparatus and for the purchase or lease of suitable buildings and grounds for keeping and storing such fire engine and apparatus and other property of said highway district, the commissioners of highways may, with the written consent and approval of the town board, contract for and purchase for such district a good and sufficient fire engine and apparatus, and may contract for and purchase or lease for such district, suitable buildings and grounds for keeping and storing such fire engine and apparatus, and other property of said district, at a price not to exceed the sum so voted, which engine and apparatus and buildings and grounds shall be the property of said highway district, but may be used and cared for by such fire company. The purchase-price of said fire engine and apparatus and buildings and grounds shall be assessed and levied upon the property of said district and collected in the same manner as other town charges are assessed, levied and collected, except that the

Compensation of town officers.

amount thereof shall be put in a separate column upon the tax-roll, and the board of supervisors of the county shall cause the sum, as certified by the town board, to be levied upon the taxable property of such highway district.

Amended by L. 1891, ch. 254, and by L. 1894, ch. 201.

§ 178. *Compensation of town officers.*—Town officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the town in the duties of their respective offices, when no fee is allowed by law for the service, as follows:

1. The supervisor, except when attending the board of supervisors, town clerks, assessors, commissioners of highways, justices of the peace and overseers of the poor, each, two dollars per day.

2. If a different rate is not otherwise established as herein provided, each inspector of election, ballot clerk and poll clerk is entitled to two dollars per day; but the board of supervisors may establish in their county a higher rate, not exceeding six dollars per day.

Amended by L. 1897, ch. 252.

§ 180, *sub. 8.*

8. Every sum allowed by the highway commissioners of a town in which the highways are worked and repaired by the money system of taxation in abatement of highway taxes for the maintenance of watering troughs [is a charge upon the town.—ED.]

Added by L. 1897, ch. 227.

§ 184. Whenever a town meeting shall vote a special appropriation of money in the sum of five hundred dollars or more, or an appropriation for highway purposes or for the support of the poor during the current year, to be levied upon the taxable property of the town, the town

Kings county.

board shall have power to borrow the sum so appropriated upon the faith and credit of the town, and to issue therefor a certificate or certificates of indebtedness, bearing interest and payable at such date or dates as may be fixed by said board, and the proceeds of such loan shall be placed to the credit of the public officers charged by law with the expenditure of said moneys. A statement of the amount maturing on such certificate of indebtedness shall be certified by the town board at its second meeting and delivered to the supervisor of the town, to be by him presented to the board of supervisors of his county at its annual meeting, and the said board of supervisors shall cause the amount specified in such certified statement to be levied and raised upon the taxable property of the town in the same manner as they are directed to levy and raise other town charges.

Added by L. 1897, ch. 84.

The following sections are applicable only to Kings county:

§ 220. **Town officers.**—The town officers of each town in counties containing six hundred thousand or more inhabitants, as determined by the last preceding federal or state enumeration of the inhabitants taken prior to any election of town officers, shall be . . . one or three commissioners of highways, . . .

Amended by L. 1893, ch. 61, and by L. 1893, ch. 387.

§ 221. **Election of officers.**—The said town officers shall be elected by ballot by the electors of each town at the annual town meeting held next preceding the general election at which they would have been elected under the present existing laws, . . .

Amended by L. 1893, ch. 387.

Term of office.

§ 222. *Term of office.*—The supervisor shall hold office for the term of two years; the town clerk, assessors, commissioners of highways, commissioners of excise and town auditors, each for the term of three years; . . . When three or more incumbents are required for any one of said offices, the term of which is three or more years, one candidate shall be elected for the regular or full term in each year.

Amended by L. 1893, ch. 387.

§ 225. *Full terms and vacancies.*—When more than one justice of the peace, assessor, commissioner of excise, commissioner of highways, town auditor or constable are to be chosen in any of said towns, each elector shall designate upon his ballot the person intended for the full term and for a vacancy, and if there are two or more vacancies they shall be designated as the longer and the shorter, or the longer, shorter and shortest vacancy, as the case may be, and each person having the greatest number of votes with reference to each designation shall be deemed duly elected for the term or vacancy designated.

Amended by L. 1893, ch. 387.

§ 228. *Fiscal year; meeting of town boards.*—The fiscal year in such towns shall begin on the first day of January and terminate on the thirty-first day of December. The board of town auditors shall meet annually for the purpose of auditing the accounts of town officers at the office of the town clerk on the thirtieth day of December, at two o'clock in the afternoon, except when the same shall occur on Sunday, in which case such meeting shall be held on the twenty-ninth; and all town officers or boards of town officers who receive or disburse any moneys

Resignations.

belonging to the town shall account for the same, under oath, to said board, annually, at such meeting.

Amended by L. 1893, ch. 387.

§ 232. *Resignations.*—The supervisor and justices of the peace of each town or a majority of them may accept the resignation of any town officer, and make appointments to fill vacancies that may be occasioned thereby, or by death, removal from town, refusal to serve, failure to qualify or otherwise, and shall file the certificates thereof in the office of the town clerk.

Amended by L. 1893, ch. 387.

§ 233. *Vacancies.*—The persons who may be appointed to fill vacancies in town offices shall serve until the second day following the next annual town meeting, or until their successors shall be duly elected and qualified; . . . Persons who may be elected to fill vacancies in town offices shall serve during the remainder of the unexpired term.

Added by L. 1893, ch. 387.

§ 234. *Official oath and undertaking.*—Each of said town officers, except justices of the peace and inspectors of election, shall, before the commencement of the term for which they were elected or appointed, or if appointed to fill vacancies, within ten days after their appointment, severally take the constitutional oath of office, and file the same in the office of the town clerk, and also, within the same time, file therein the undertakings, if any, which are required to be given by them for the faithful discharge of their duties. . . . If . . . such officers shall fail, neglect, refuse or omit to comply with the provisions of this section, a vacancy shall thereupon be created, which shall be filled by appointment in the manner prescribed by this article; . . .

Added by L. 1893, ch. 387.

Village Law.

VILLAGE LAW.

§ 226. *Water pipes in highways outside of village.*

—The board of water commissioners of a village may cause water pipes to be laid, relaid or repaired under any public highway in a county in which any part of such village is situated, or in any adjoining county, for the purpose of introducing water into and through the village; and shall cause the surface of such highway to be restored to its usual condition.

ARTICLE V.

STREETS, SIDEWALKS AND PUBLIC GROUNDS.

SECTION 140. Definitions.

141. Separate highway district.
142. Care of bridges.
143. When village may construct or repair bridges.
144. Dedication of streets.
145. Petition for street improvement.
146. Notice of meeting of board to consider petition.
147. Meeting and determination of board.
148. Effect of determination.
149. Application for commissioners ; notice of application
150. Appointment of commissioners.
151. Notice of meeting of commissioners.
152. Meeting and award of commissioners.
153. Appeal from award of commissioners.
154. Return by clerk.
155. Hearing of the appeal.
156. Compensation of commissioners.
157. Costs on appeal.

Streets, sidewalks and public grounds.

SECTION 158. Payment for property acquired for street improvements.

159. Changing grade of street or bridge.

160. Streets on boundary lines.

161. Crosswalks and sidewalks.

162. Credit for flagging sidewalks.

163. Snow and ice on sidewalks.

164. Cleaning streets.

165. Sprinkling streets.

166. Pavements.

167. Trimming trees.

168. Local assessments under this article.

169. Acquisition of lands for parks and squares.

SECTION 140. ***Definitions.***—The term “street” as used in this chapter also includes a highway, road, avenue, lane or alley which the public have the right to use; and the term “pavement” includes a macadam, telford, asphalt, brick or other similarly improved roadbed, and is only applied to the portion of the street between the sidewalks or established curb lines.

§ 141. ***Separate highway district.***—The streets and public grounds of a village, except as provided in the next section, are under the exclusive control and supervision of the board of trustees. The board of trustees may expend a portion of the street fund upon outside highways connecting with the village streets.

§ 142. ***Care of bridges.***—If at the time this chapter takes effect, the board of trustees of a village has the supervision and control of a bridge therein, it shall continue to exercise such control under this chapter. In any other case, every public bridge within a village, shall be under the control of the commissioners of highways of the town in which the bridge is wholly or partly situated, or

Dedication of streets.

such other officer as may be designated by special law, and the expense of constructing and repairing such bridge and the approaches thereto is a town charge, unless the village assumes the whole or part of such expense.

§ 143. *When village may construct or repair bridges.*—A village may assume the control, care and maintenance of a bridge or bridges wholly within its boundaries, upon the adoption of a proposition therefor, at a village election; or a proposition may be adopted authorizing the board of trustees to enter into an agreement with the commissioners of highways of a town, in which any part of such village is situated, to construct or repair a bridge in any part of the village included in such town, at the joint expense of the village and town, which agreement shall fix the portion to be paid by each.

§ 144. *Dedication of streets.*—An owner of land in a village who has laid out a street thereon may dedicate such street, or any part thereof, or an easement therein, to the village for a public street, or an owner may dedicate for such purpose land not laid out as a street. Upon an offer in writing by the owner to make such a dedication, the board of trustees shall meet to consider the matter; and it may, by resolution, determine to accept a dedication of the whole or any part of the land described in such offer, or of the whole or any part of such street, to be described in such resolution. Upon the adoption of such a resolution the owner may execute and deliver to the village clerk a proper conveyance of the land to be dedicated. The board of trustees may, by resolution, accept the conveyance, and a certified copy of such resolution, together with the conveyance, shall thereupon be recorded in the office of the county clerk. Upon the acceptance of

Petition for street improvement.

the conveyance the land described therein shall become and be a public street of the village. No street less than two rods in width shall be accepted by dedication. All offers of dedication must be entered at length in the minutes of the board of trustees.

§ 145. *Petition for street improvement.*—Five resident freeholders may present to the board of trustees a petition for laying out, altering, widening, narrowing or discontinuing a street in the village. The petition must be addressed to the board of trustees, and must contain a statement of the following facts:

1. The names and residences of the petitioners.
2. If the petition be for the laying out of a street, the general course thereof, and a description of the land to be taken.
3. If the petition be for the alteration of a street, its name, the proposed alteration, and a description of the land, if any, to be taken.
4. If the petition be for the widening of a street, its name and a description of the land to be taken.
5. If the petition be for the narrowing of a street, its name, its proposed width after such alteration, and the manner in which such narrowing is to be effected.
6. If the petition be for the discontinuance of a street, its name and the part proposed to be discontinued.
7. If the petition be for the laying out, alteration or widening of a street, the names and residences of the owners of all land to be taken.
8. If the petition be for the narrowing or discontinuance of a street, the names and residences of the owners of adjoining lands effected.

§ 146. *Notice of meeting of board to consider petition.*—Upon the presentation of the petition the board

Notice of meeting of board.

shall immediately give notice that it will meet at a specified time and place, not less than ten nor more than twenty days from the date of such notice, to consider the petition. The notice must state the general object of the petition, and if it be for the laying out of a street, a general description of its proposed course, and in any other case, the name of the street proposed to be changed or discontinued.

The notice must be served upon the following persons, unless such service be waived by them in writing:

1. If the petition be for the laying out of a street, upon each owner of land to be taken.
2. If the petition be for the alteration or widening of a street, upon each owner of land, if any, to be taken, and upon each owner of land adjoining the part of the street affected.
3. If the petition be for the narrowing of a street, upon each owner of land adjoining the part of the street affected.
4. If the petition be for the discontinuance of a street, upon each owner of land adjoining the part of the street proposed to be discontinued, and also upon the owner of land otherwise affected by the proposed discontinuance.

If a person other than the owner is in possession of such land, notice must also be served upon him. Such notice shall also be published in each newspaper in the village, and posted in five conspicuous places therein. The notice must be served, posted and published at least ten days before the hearing.

§ 147. *Meeting and determination of board.*—The board shall meet at the time and place specified in the notice to consider the petition and also any objections thereto. A person affected by the proposed improvement, and upon whom notice has not been served, may appear upon the hearing. A voluntary general appearance of

Application for commissioners.

such a person is equivalent to personal service of the notice upon him. The board may adjourn the hearing and must determine the matter within twenty days from the date fixed for such hearing. If the board determine to grant the petition an order must be entered in its minutes containing a description of the land, if any, to be taken.

§ 148. *Effect of determination.*—The determination by the board has the following effect:

1. If the petition for the laying out, alteration or widening of a street be granted, the board of trustees may acquire the land for such improvement by purchase or by proceedings under this article. But no street shall be laid out through a building or any fixtures or erections for the purposes of trade or manufacture, or any yard or enclosure necessary to be used for the enjoyment thereof, without the consent of the owner, except upon the order of a justice of the supreme court residing in the judicial district in which the village or a part thereof is situated, to be granted upon an application by the board of trustees on a notice to the owner of not less than ten days.
2. If the petition for the narrowing of a street be granted, the board shall enter upon its records a description of the street after such narrowing, and the portion of the former street not included in such description is abandoned.
3. If the petition, or the discontinuance of a street be granted, such street or the part thereof so discontinued is abandoned.

§ 149. *Application for commissioners; notice of application.*—If a petition for the laying out, alteration or widening of a street be granted, and the board cannot agree with an owner upon the purchase price of land

Meeting and award of commissioners.

necessary to be acquired, an application may be made by the board to the county court of the county in which such land is situated, for the appointment of three commissioners to determine the compensation to be made to such owner. At least ten days before the making of such application a notice specifying the time and place thereof must be served upon such owner.

§ 150. *Appointment of commissioners.*—Upon such application the county court must appoint as such commissioners three resident disinterested freeholders of the county in which such land is situated, not residents of the village nor nominated by a person interested in the proceeding. In case of a vacancy another commissioner may be appointed in like manner. The order of appointment must contain the name of each person whose compensation is to be determined by the commissioners.

§ 151. *Notice of meeting of commissioners.*—The commissioners shall file with the village clerk the constitutional oath of office. They shall appoint a time and place for a hearing and serve a notice thereof upon the board of trustees and upon each person named in the order. Such notice must be served at least ten days before the hearing, which must be held within twenty days after their appointment.

§ 152. *Meeting and award of commissioners.*—The commissioners shall meet at the time and place appointed and may adjourn from time to time. They shall personally examine the land, compensation for which is to be determined by them, and may take testimony in relation thereto. They shall keep minutes of their proceedings and reduce to writing all evidence taken by them. They shall

Appeal from award of commissioners.

award to each owner of land named in the order the compensation to which he may be entitled after making allowance for any benefit he may derive from the improvement. After the appointment of the commissioners and before any evidence is taken on the hearing, the board may make an agreement with an owner named in the order for the compensation to be made to him. If such an agreement be made, notice thereof must be served upon the commissioners, and thereupon the proceeding as to such owner is discontinued. The award shall be signed by a majority of the commissioners, and, together with the minutes of their proceedings, the evidence taken by them, and any notice of agreement served upon them, shall be filed in the office of the village clerk.

§ 153. *Appeal from award of commissioners.*—The board of trustees, or an owner to whom an award has been made by the commissioners, may, within twenty days after the filing of the award, appeal therefrom to the county court by which the commissioners were appointed. Such appeal shall be taken by a notice of appeal to be served as follows:

1. If the appeal be taken by the board of trustees, notice thereof must be filed by the village clerk in his office, and addressed to and served upon each owner to whose award objection is made by the board.

2. If the appeal be taken by an owner, the notice of appeal must be addressed to the board of trustees and served upon the village clerk.

The notice must in either case briefly state the grounds upon which the appeal is taken.

§ 154. *Return by clerk.*—Within ten days after such appeal the village clerk shall transmit to the county judge

Hearing of the appeal.

the petition filed with the board for the laying out, alteration or widening of the proposed street, all papers and evidence in the proceeding subsequently filed in his office, and a certified copy of each resolution of the board of trustees relating to the improvement.

§ 155. *Hearing of the appeal.*—The appeal may be brought on by either party by a notice of not less than ten nor more than twenty days. If the appeal is by the board of trustees, it brings up for review all proceedings by or before the commissioners, and the award made by them. If the appeal is by an owner, it brings up for review all proceedings relating to the proposed improvement. If the appeal is by the board of trustees, and two or more owners are made respondents, the county court may affirm or reverse the award of the commissioners as to the whole or any number of such owners; and if the appeal is by an owner, the county court may affirm or reverse the award.

If the award be reversed, the order of reversal must state the reasons therefor, and if upon grounds relating to the amount of the award, or for errors in the proceedings by the commissioners, it must direct a rehearing before the same or other commissioners.

If it appears from the order of the county court that the award is reversed solely upon grounds relating to the amount of compensation, or for errors in the proceedings by the commissioners, no further appeal shall be allowed. The order of the county court upon such appeal, together with the papers transmitted by the village clerk, must be filed by the county judge in the office of such clerk. The order must also be entered in the office of the county clerk.

§ 156. *Compensation of commissioners.*—Each commissioner is entitled to five dollars for each day actually

Costs on appeal.

and necessarily spent in such proceeding, together with his necessary traveling and incidental expenses. Such compensation and expenses are a charge against the village.

§ 157. *Costs on appeal.*—Costs on appeal may be allowed as follows:

1. If on appeal by the board of trustees the award of the commissioners be affirmed, the county court may allow to the respondent costs of such appeal, against the village, not exceeding twenty-five dollars.

2. If on such an appeal the award be reversed on the ground that as to a specified owner it is excessive, the court may fix the amount of costs, not exceeding fifty dollars, to be stated in the order, to be paid by the village to such owner, if upon a rehearing the amount awarded to him is not more favorable to the village by the amount of such costs than the first award.

3. If on appeal by an owner the award be affirmed, costs not exceeding twenty-five dollars may be awarded against him, to be recovered by the village.

4. If on such an appeal the award be reversed, the county court may allow to the owner a sum not exceeding twenty-five dollars for the costs of appeal, which shall be a charge against the village.

§ 158. *Payment for property acquired for street improvement.*—Upon the making of an agreement for compensation to an owner under this article, or upon the final order or award fixing the amount of such compensation in proceedings therefor, the board shall immediately pay such amounts and the costs, if any, allowed in such proceedings, if it has funds available for that purpose; if not, money may be borrowed and certificates of indebtedness bearing interest issued therefor, or like certificates

Changing grade of street or bridge.

may be issued for such amounts, and payable, in either case, not more than one year from the date thereof; and the amount of such certificates shall be included in the next annual tax levy.

§ 159. *Changing grade of street or bridge.*—If a village has exclusive control and jurisdiction of a street or bridge therein, it may change the grade thereof. If such change of grade shall injuriously affect any building or land adjacent thereto, or the use thereof, the change of grade to the extent of the damage resulting therefrom, shall be deemed the taking of such adjacent property for a public use. A person claiming damages from such change of grade must present to the board of trustees a verified claim therefor, within sixty days after such change of grade is affected. The board may agree with such owner upon the amount of damages to be allowed to him. If no agreement be made, within thirty days after the presentation of the claim, the person presenting it may apply to the supreme court for the appointment of three commissioners to determine the compensation to which he is entitled. Notice of the application must be served upon the board of trustees at least ten days before the hearing thereof. All proceedings subsequent to the appointment of the commissioners shall be taken in accordance with the provisions of the condemnation law, so far as applicable, except that the commissioners in fixing their award may make an allowance for benefits derived by the claimant from such improvement. The amount agreed upon for such damages or the award therefor, together with the costs, if any, allowed to the claimant, shall be a charge against such village. The board may borrow money for the payment thereof, or issue certificates of indebtedness therefor, in the same manner as in case of damages for laying out a street.

Streets on boundary lines.

§ 160. *Streets on boundary lines.*—Whenever a street is on a line between two villages, or between a village and a city or town, the highway or street commissioners of such adjoining municipalities shall, on or before the first day of May in each year, meet at a time and place to be determined by them, and divide such street. The officers present at such meeting shall allot a part of the street to each municipality in such manner that the labor and expense of keeping such street in repair may be equal as nearly as practicable. The officers making such division shall, within ten days thereafter, file in the office of the clerk of each municipality a certificate showing the part of such street allotted to each.

§ 161. *Crosswalks and sidewalks.*—The board of trustees may construct and repair crosswalks upon the streets within the village. It may also construct and repair sidewalks upon such a street wholly at the expense of the village, or of the owners or occupants of the adjoining land, or partly at the expense of each. Upon the adoption of a proposition therefor in a village of the third or fourth class, all sidewalks shall thereafter be constructed and repaired wholly at the expense of the village. If a sidewalk is so required to be constructed or repaired wholly at the expense of the owners or occupants of the adjoining lands, a notice specifying the place and manner, and the time, not less than ten days, in case of a new walk, or not less than twenty-four hours in case of repairs, within which the sidewalk is required to be constructed or repaired, shall be served upon such owners or occupants. If an owner or occupant shall not construct or repair the sidewalk as required by the notice, the board of trustees may cause the same to be so constructed or repaired, and assess the expense thereof upon the adjoining land.

If a sidewalk is to be constructed or repaired at the

Credit for flagging sidewalk.

joint expense of the village and the owner or occupant, the board of trustees may cause the same to be constructed or repaired, and assess upon the adjoining land the proportion of the expense chargeable against the same; or it may direct the owner or occupant to contribute labor or materials therefor.

§ 162. *Credit for flagging sidewalk.*—Whenever the owner or occupant of lands adjoining a street shall, with the consent of the board of trustees, construct a sidewalk of stone, cement, brick or other similar material along the line of such land, of the width of four feet or more, and of the value of at least four dollars per lineal rod, the board of trustees shall credit such owner or occupant on account of his assessment for street taxes in such village, three-fourths of the actual and necessary expense of constructing such sidewalk; or, instead of such credit, may pay to such owner or occupant from the street fund of the current year, one-half of the cost of such sidewalk. If credit is allowed, such owner or occupant shall be exempt from taxation on account of streets in such village until the amount of the exemption equals the credit so allowed.

§ 163. *Snow and ice on sidewalks.*—The board of trustees may require the owners or occupants of land fronting on sidewalks to keep them clear of snow and ice, and upon default, may cause such sidewalks to be cleaned, and assess the expense thereof upon such adjoining land, or may cause the sidewalks on any street or portion thereof to be kept clear of snow and ice, and assess the expense upon the adjoining land.

§ 164. *Cleaning streets.*—The board of trustees may require the owners of land fronting upon the streets to keep the portion of the street between the land and the

Sprinkling streets.

center of the street cleaned of rubbish or other accumulations thereon, injurious to the use or appearance thereof, and to cause all grass and weeds growing therein to be cut and removed once in each month from May to October, inclusive. If the owner of such adjoining land shall fail to comply with such requirement the board of trustees may cause such work to be done, and assess the expense thereof upon such adjoining land.

§ 165. *Sprinkling streets.*—The board of trustees may cause a street or a part thereof to be sprinkled, and may assess the expense thereof, in whole or in part, upon the owners or occupants of the adjoining land.

§ 166. *Pavements.*—The board of trustees may cause a street in the village to be paved, wholly at the expense of the village, or of the owners of the adjoining land, or partly at the expense of each; but such street shall not be paved wholly at the expense of the owners of the adjoining land unless a petition be presented to the board of trustees signed by the owners of at least two-thirds of the frontage on the street, or portion thereof, proposed to be paved, and a hearing given thereon to all persons interested, on a notice of at least ten days. If a pavement is so required to be constructed or repaired wholly at the expense of the owners of the adjoining lands, a notice specifying the place and manner, and the time, not less than thirty days, within which the pavement is required to be constructed or repaired, shall be served upon the owners. If an owner shall not construct or repair the pavement as required by the notice, the board of trustees may cause the same to be so constructed or repaired, and assess the expense thereof upon the adjoining land. If a pavement is to be constructed or repaired at the joint expense of the village and the owner of the adjoining land, the board of trustees may cause the same to be constructed or repaired, and assess

Trimming trees.

upon the adjoining land the proportion of the expense chargeable against the same; or it may direct the owner to contribute labor or materials therefor. The total amount expended for street paving in any fiscal year from the moneys raised during such year for street purposes, otherwise than in pursuance of a village election, shall not be more than one-half thereof. No land owner shall be required to pave or bear the expense of paving any portion of the street not in front of such land, nor beyond the centre of the street. All pavements laid by the owners of adjoining land shall be laid under the supervision and in accordance with the directions of the board of trustees. The expense of constructing a pavement or any part thereof may be raised in an entire amount or in similar amounts from time to time as the board of trustees may determine. If any portion of such expense is to be borne by the village, bonds or certificates of indebtedness may be issued. If such expense or any part thereof is to be assessed upon adjoining land, the board may apportion it upon the lands and assess the same as a whole or by installments. Notice of an assessment based upon such apportionment shall be given to the land owners, who may pay the amounts assessed within ten days after such notice. At the expiration of that time bonds or certificates of indebtedness may be issued for the aggregate amount of such assessment then remaining unpaid. Taxes for the amount of such bonds or certificates issued on account of default in the payment of the amount apportioned upon adjoining land, shall be levied and collected in the manner prescribed by this chapter in case of unpaid assessments for the construction of sewers.

Amended by L. 1898, ch. 365.

§ 167. **Trimming trees.**—The board of trustees may require the owners of land to trim the trees in front

Local assessments under this article.

thereof, and upon default, may cause such trees to be trimmed, and assess the expense thereof upon the adjoining land.

§ 168. *Local assessments under this article.*—Whenever expenditures are made by the board of trustees for constructing or repairing sidewalks or pavements, trimming trees, sprinkling streets or keeping the sidewalks or streets cleared of weeds, ice, snow or other accumulations thereon, which under this article are assessable upon the land affected or improved thereby, the board shall serve a notice of at least ten days upon the owner or occupant of such property, stating that such expenditure has been made, its purpose and amount, and that at a specified time and place it will meet to make an assessment of the expenditure upon such land. The board shall meet at the time and place specified. It shall hear and determine all objections that may be made to such assessment, including the amount thereof, and shall assess upon the land the amount which it may deem just and reasonable, not exceeding, in case of default, the amount stated in the notice.

If the amount so assessed be not paid within twenty days after such assessment, an action to recover the amount may be maintained by the village against the owner or occupant liable therefor, or a special warrant may be issued by the board of trustees for the collection of such assessment, or the amount thereof may be included in the next annual tax levy.

§ 169. *Acquisition of lands for parks and squares.*—The board of trustees may, on behalf of the village, accept by grant or devise a gift of land for a public park or square within the village, or wholly within one mile of the boundaries thereof, or may submit to a village election

Acquisition of lands for parks and squares.

a proposition to purchase land so located for such purpose at an expense, specified in the proposition, not exceeding one per centum of the value of the taxable property of the village, as appears by the last preceding assessment roll. Upon the acquisition of land for the purposes of this section, either by gift or purchase, the board may establish and maintain a public park or square thereon.

Transportation corporations law.

TRANSPORTATION CORPORATIONS LAW.

§ 33. *Crossings.*—Wherever any tramway, constructed by any such corporation, shall cross a railroad, highway, turnpike, plank-road or canal, such tramway shall be so constructed as not to interfere with the free use of such railroad, highway, turnpike, plank-road or canal for the purposes for which they were intended.

§ 43. *Railroad, turnpike, plank-road and highway crossings.*—Whenever any line of pipe of any such corporation shall necessarily cross any railroad, highway, turnpike or plank-road, such line of pipe shall be made to cross under such railroad, highway, turnpike or plank-road and with the least injury thereto practicable, and unless the right to cross the same shall be acquired by agreement, compensation shall be ascertained and made to the owners thereof, or to the public in case of highways, in the manner prescribed in the condemnation law, but no exclusive title or use shall be so acquired as against any railroad, turnpike or plank-road corporation, nor as against the rights of the people of this state in any public highway, but the rights acquired shall be a common use of the lands in such manner as to be of the least practical injury to such railroad, turnpike or plank-road, consistent with the use thereof by such pipe-line corporation, nor shall any such corporation take or use any lands, fixtures or erections of any railroad corporation, or have the right to acquire by condemnation the title or use, or right to run along or upon the lands of any such corporation, except for the purpose of directly crossing the same when necessary.

Consent of local authorities.

§ 45. *Consent of local authorities.*—No pipe line shall be constructed across, along or upon any public highway without the consent of the commissioners of highways of the town in which such highway is located, upon such terms as may be agreed upon with such commissioners. If such consent or the consent of the commissioners or municipal authorities required by the preceding section cannot be obtained, application may be made to the general term of the supreme court of the department in which such highway or bridge is situated for an order permitting the corporation to construct its line across, along or upon such highway, or across or upon such bridge. The application shall be by duly verified petition and notice which shall be served upon the commissioners of highways of the town in which the highway is situated, or the municipal authorities of the village or city where such bridge is located, according to the practice or order of the court, or an order to show cause, and the court upon the hearing of the application may grant an order permitting the line to be so constructed in such manner and upon such terms as it may direct.

Turnpike, plank-road and bridge corporations.

ARTICLE IX.

TURNPIKE, PLANK-ROAD AND BRIDGE CORPORATIONS.

SECTION 120. Incorporation.

121. Restriction upon location of road.
122. Agreement for use of highway.
123. Application to board of supervisors.
124. Commissioners to lay out road.
125. Possession of and title to real estate.
126. Use of turnpike road by plank road.
127. Width and construction of road.
128. Construction of bridges ; obstruction of rafts prohibited.
129. Certificate of completion of road or bridge.
130. Gates, rates of toll ; and exemption.
131. Toll gatherers.
132. Penalty for running a gate.
133. Location of gates and change thereof.
134. Inspectors, their powers and duties.
135. Change of route, extensions and branches.
136. Milestones, guide-posts and hoist-gates.
137. Location of office of corporation.
138. Consolidation of corporations, sale of franchise.
139. Surrender of road.
140. Taxation and exemption.
141. Hauling logs and timber.
142. Encroachment of fences.
143. Penalty for fast driving over bridges.
144. Acts of directors prohibited.
145. Actions for penalties.
146. Proof of incorporation.
147. When stockholders, to be directors.
148. Dissolution of corporation, road to be a highway.
149. Town must pay for lands not originally a highway.
150. Highway labor upon line of plank-road or turnpike.
151. Extension of corporate existence.

Incorporation.

SECTION 120. *Incorporation.*—Five or more persons may become a corporation for the purpose of constructing, maintaining and owning a turnpike, plank-road or a bridge, or causeway across any stream or channel of water, or adjoining bay, swamp, marsh, or water to form in connection with such bridge or causeway a continuous roadway across the same, by signing, acknowledging and filing a certificate containing the name of the corporation, its duration, not exceeding fifty years, the amount and number of shares of its capital stock, the number of its directors, and their names and post-office address for the first year, the termini of the proposed road, its length, and each town, city or village into or through which it is to pass, or of a bridge, the location and plan thereof, and the post-office address of each subscriber, and the number of shares of stock which he agrees to take, the aggregate of which subscriptions shall not be less than five hundred dollars for every mile of road, or if a bridge corporation not less than one-fourth of the amount of the capital stock, and five per cent of which must be actually paid in cash. There shall be indorsed on and annexed to the certificate and made a part thereof the affidavit of at least three of the directors named therein, that the required amount of capital stock has been subscribed and the prescribed percentage paid in cash.

§ 121. *Restrictions upon location of road.*—No such road shall be laid out through any orchard of the growth of four years or more to the injury or destruction of fruit trees, or through any garden cultivated for four years or more before the laying out of the road, or through any dwelling-house or building connected therewith, or any yards or inclosures necessary for its use or enjoyment without the consent of the owner thereof, nor shall any such corporation bridge any stream in any manner that

Agreement for use of highways.

will prevent or endanger the passage of any raft of twenty-five feet in width, or where the same is navigable by vessels or steamboats.

§ 122. *Agreement for use of highways.*—The supervisor and commissioner of highways, or a majority if there be more than one of any town, may agree in writing with any such corporation for the use of any part of a public highway therein required for the construction of any such road, and the compensation to be paid by the corporation for taking and using such highway for such purpose on first obtaining consent of at least two-thirds of all the owners of land bounded on or along such highway, which agreement shall be filed and recorded in the town clerk's office of the town. If such agreement cannot be made the corporation may acquire the right to take such highway for such purpose by condemnation. The compensation therefor shall be paid to the commissioners of highways, to be expended by them in improving the highways of the town.

§ 123. *Application to board of supervisors.*—If the lands necessary for the construction of the road or bridge of any such corporation in any county have not been procured by gift or purchase, and the right to take and use any part of any highway therein required by such corporation shall not have been procured by agreement with the supervisor and commissioners of highways of the town in which such highway is situated, the corporation may make application to the board of supervisors of each county in which such bridge or road, or any part thereof, is to be located, for authority to build, lay out and construct the same, and take the necessary real estate for such purpose. Notice of the application shall be published in at least one public news-

Commissioners to lay out road.

paper in each county for six successive weeks, specifying the time and place where it will be made, the location, length and breadth of any such bridge, and the length and route of any such proposed road, its character, and each town, city and village in or through which it is to be constructed. The application may be made at any annual or special meeting of the board, and if the corporation desires a special meeting therefor any three members of the board may fix a time when the same shall be held, and notice thereof shall be served upon each of the other supervisors by delivering the same to him personally or leaving it at his place of residence at least twenty days before the minutes,* and the expenses of the special meeting and of notifying the members of the board thereof shall be paid by the corporation. All persons interested therein or owning real estate in any of the towns through which it is proposed to construct the road may appear and be heard upon the hearing of the application. The board may take testimony in respect thereto, or authorize it to be taken by a committee of the board and may adjourn the hearing from time to time. After hearing the application the board may, by an order entered in its meetings,* authorize the corporation to construct such bridge or road and to take the real estate necessary for that purpose, and a copy of the order certified by the clerk of the board shall be recorded by the corporation in the office of the clerk of the county in which such bridge or road or any part thereof is to be located before any act shall be done under it.

See County Law, § 62, Appendix.

§ 124. *Commissioners to lay out road.*—If the application for the construction of any such road is granted,

*So in the original.

Possession of and title to real estate.

the board shall appoint three disinterested persons, not owners of real estate in any town, through which the road is to be constructed or in any adjoining town, commissioners to lay out the road. They shall take the constitutional oath of office, and without unnecessary delay lay out the route of such road in such manner as in their opinion will best promote the public interests; they shall hear all persons interested who shall apply to be heard and may take testimony in relation thereto, and shall cause an accurate survey and description of the road and the necessary buildings and gates, signed and acknowledged by them to be recorded in the clerk's office of the county. If the road is situated in more than one county, such survey and description shall be separate as to that portion in each county and filed in the office of the clerk of the county in* which it relates. The corporation shall pay each commissioner three dollars for every day spent by him in the performance of his duties and his necessary expenses.

§ 125. *Possession of and title to real estate.*—The route so laid out and surveyed by the commissioners shall be the route of the road, and the corporation may enter upon, take and hold for the purposes of its incorporation, the lands described in such survey as necessary for the construction of its road, and requisite buildings and gates. If for any cause the owner of any of such lands shall be incapable of selling the same or his name or residence can not, with reasonable diligence be ascertained or the corporation is unable to agree with the owner for the purchase thereof it may acquire title thereto by condemnation.

§ 126. *Use of turnpike road by plank-road.*—No plank-road shall be made on the roadway of any turnpike

* So in the original.

Use of turnpike road by plank-road.

corporation without its consent, except for the purpose of crossing the same. Any plank-road corporation may contract with any connecting turnpike corporation for the purchase of its roadway or a part thereof, or of its stock, on such terms as may be mutually agreed upon, and such stock, if purchased, shall be held by the plank-road corporation for the benefit of its stockholders in proportion to the amount of stock held by each, and a transfer of stock in the plank-road corporation shall carry with it its proportional amount of the turnpike stock, and entitle the holder thereof to his share of the dividends derived therefrom. After the purchase of the whole of the stock of any such turnpike corporation by such plank-road corporation the directors of the plank-road corporation shall be the directors of the turnpike corporation, and shall manage its affairs and render an account of the same annually to the stockholders of the plank-road corporation. If the plank-road corporation is dissolved, its stockholders at the time of dissolution shall be the stockholders of the turnpike corporation in proportion to the amount of stock held by each, and the stock of the turnpike corporation shall thereafter be deemed to be divided into shares equal in number to the shares of stock of the late plank-road corporation, and scrip therefor shall be issued accordingly to each of the last stockholders of the plank-road corporation, and the officers of the turnpike corporation shall be the same in number as provided for in its charter or certificate of incorporation, and shall be chosen by such former stockholders of the plank-road corporation or their assigns. A corporation owning a turnpike road on or adjoining which a plank-road shall have been constructed may abandon that portion of its road on or adjoining the route of which a plank-road is actually constructed and used.

Width and construction of road.

§ 127. *Width and construction of road.*—Every such plank-road shall be so constructed as to make, secure and maintain a smooth and permanent road, the track of which shall be made of timber, plank or other hard material forming a hard and even surface, and every such turnpike road shall be bedded with stone, gravel or such other material as may be found on the line thereof, and faced with broken stone or gravel, forming a hard and even surface with good and sufficient ditches on each side wherever practicable, and all such roads shall be laid out at least four rods wide and the arch or bed at least eighteen feet wide, and shall be so constructed as to permit carriages and other vehicles conveniently to pass each other, and to pass on and off such road where intersected with other roads. Any corporation which shall have once laid its road with plank may relay the same, or any part thereof, with broken stone, gravel, shells or other hard materials, forming a good and substantial road. Any plank-road or turnpike corporation may lay iron rails on its road suitable for the use of wagons and vehicles drawn by horses or animals over its road, but no other motive power shall be used thereon.

§ 128. *Construction of bridges; obstruction of rafts prohibited.*—Every bridge constructed by any such corporation shall be built with a good and substantial railing or * sliding at least four and one-half feet high, and over any stream navigable by rafts the corporation shall keep the channel of the stream above and below the bridge free and clear from all deposits, formed or occasioned by the erection of the bridge, which shall in any wise obstruct the navigation thereof, and shall be liable to all persons unreasonably or unnecessarily delayed or hindered in passing the same for all damages sustained thereby.

* So in the original.

Certificate of completion of road or bridge.

Nothing in this act shall be construed to authorize the bridging of any river or water-course where the tide ebbs and flows, or any waters over which the federal authorities have any control, unless the consent of such federal authorities be first obtained; nor the construction of any bridge within the limits prescribed by any existing law for the erection or maintenance of any other bridge.

Amended by L. 1892, ch. 686, by L. 1895, ch. 722, and by L. 1896, ch. 778.

§ 129. *Certificate of completion of road or bridge.*—When any such corporation shall have completed its bridge or road or any five consecutive miles thereof, it may apply to the commissioners of highways of each town in which the completed road or bridge is situated to inspect the same, and if a majority of the commissioners are satisfied that the road or bridge is made and completed as required by law and in a manner safe and convenient for the public use, they shall make a certificate to that effect, which shall be filed in the office of the county clerk. Each commissioner shall be paid by the corporation two dollars per day for his services and necessary expenses.

§ 130. *Gates, rates of toll; and exemption.*—Upon filing such certificate such corporation may erect a toll-gate at such bridge or one or more toll-gates upon the road so inspected, and may demand and receive the following rates of toll, a printed list of which shall be conspicuously posted at or over each gate: If a bridge corporation, such sum as shall be from time to time prescribed by the board of supervisors of the county or counties in which the bridge is located. If a turnpike or plank-road, for every vehicle drawn by one animal, one cent per mile, and one cent per mile for each additional animal; for every vehicle used

Gates; rates of toll; and exemption.

chiefly for carrying passengers, three cents per mile, and one cent per mile for each additional animal; for every horse rode, led or driven, three-quarters of a cent per mile; for every score of sheep or swine, one and one-half cents per mile, and for every score of neat cattle, two cents per mile. When diverging roads strike any plank-road or turnpike at or near any toll-gate, the board of supervisors of the county may direct that the toll charge shall commence from the point of such divergence, and only for the distance traveled on such turnpike or plank-road, but fractions of cents may be made units of cents in favor of the plank-road or turnpike corporation. The corporation may from time to time commute, but not for a longer period than one year at any one time, with any person whose place of abode shall adjoin or be near to the road for the toll payable at the nearest gate on each side thereof, and the commutation may be renewed from year to year. No tolls shall be charged or collected at any gate, from any person going to or from public worship, a funeral, school, town meeting or election at which he is a voter to cast his vote, a military parade which he is required by law to attend, any court which he shall be required to attend as a juror or witness, nor when going to or from his required work upon any public highway, nor when transporting troops in the actual service of the United States; and no toll from persons living within one-half mile of the gate by the most usual traveled road when not engaged in the transportation of other persons or property except that persons living within one mile of the gate, by the most usually traveled road, in an incorporated village of over six thousand inhabitants, when not engaged in the transporation of the persons or property shall be exempt from the payment of toll.

Amended by L. 1893, ch. 538.

See County Law, §§ 62, 73, Appendix.

Toll gatherers.

§ 131. **Toll gatherers.**—Every such corporation may appoint toll gatherers to collect toll at each gate, who may detain and prevent from passing through the gate, any person riding, leading or driving animals or vehicles, subject to the payment of toll, until the toll is paid, but if he shall unreasonably hinder or delay any traveler or passenger liable to the payment of toll, or shall demand or receive from any person more toll than he is authorized by law to collect, he shall forfeit to such person the sum of five dollars for every offense, and the corporation employing him shall be liable for the payment thereof, and for any damages sustained by any person for acts done or omitted to be done by him in his capacity of toll gatherer, if, on recovery of judgment against the toll gatherer therefor, execution thereon shall be returned nulla bona.

§ 132. **Penalty for running a gate.**—Any person who, with intent to avoid the payment of toll, shall pass any gate, without paying the toll required by law, or shall, with his team, carriage or horse, turn out of a turnpike or plank-road and pass any gate thereon on ground adjacent thereto, shall forfeit for each offense the sum of ten dollars to the corporation injured.

§ 133. **Location of gates and change thereof.**—No such corporation shall erect any toll-gate, house, or other building within ten rods of the front of any dwelling house, barn or other out house, without the written consent of the owner, and the county judge of the county in which the same is located shall, on application, order any building so erected to be removed, and if a majority of the commissioners of highways of any town, in which a toll-gate shall be located, or in an adjoining town, shall deem the location of any gate unjust to the public interests by

Location of gates and change thereof.

reason of the proximity of diverging roads or otherwise, they may, on fifteen days' written notice to the president or secretary of the corporation, apply to the county court of the county in which the gate is located, for an order to alter or change its location. On hearing such application, and viewing the premises, if deemed necessary, the court may make such order in the matter as may be just and proper. Either party may, within fifteen days thereafter, appeal to the general term of the supreme court from such order, on giving such security as the county judge, making the order, may prescribe. Upon such appeal the supreme court, on motion of either party and on due notice, shall appoint three disinterested persons who are not residents of any town through or into which such road shall run, or to or from which it is the principal thoroughfare, or any adjoining town, as referees to hear, try and determine the appeal. Such referees shall view the premises and the location of the gate, and hear the parties in the same manner as on the trial of an issue of fact by a referee in a civil action in the supreme court, and report their decision thereon and the reasons therefor, and the evidence taken thereon to the supreme court, and such court shall review the report and render judgment thereon as justice and equity shall require, which shall be final and conclusive. The referees shall be entitled to the same fees as referees in civil actions in the supreme court, to be paid in the first instance by the party in whose favor their report or decision shall be, and the supreme court shall award judgment therefor, with such costs and expenses as it may deem reasonable, to the successful party on the appeal, which judgment shall be entered with the order affirming or reversing the order appealed from, and may be enforced by execution as a judgment of a court of record. If the order of the county court is not appealed from, it may be enforced, as the court may direct, and

Inspectors; their powers and duties.

the court may allow such costs as may be deemed just and equitable.

§ 134. *Inspectors; their powers and duties.*—The commissioners of highways of the several towns and the trustees or other officers in the incorporated cities and villages of the state, who perform the duties of commissioners of highways in such cities and villages, shall be inspectors of plank-roads and turnpikes, in their respective towns, cities and villages. They shall inspect or cause to be inspected by one or more of them the whole of such turnpike or plank-roads as lies in their respective towns, villages or cities, at least once in each month, and whenever written complaint shall be made to any inspector, that any part of such road lying in the town, city or village of such inspector is out of repair he shall, without delay, view and examine the part complained of. If such turnpike or plank-road shall be found to be out of repair or in condition not to be conveniently used by the public, such inspectors or either of them, or the one to whom such complaint shall have been made, shall give written notice to the toll-gatherer, or person attending the gate nearest the place out of repair or in bad condition to cause the same to be put in good condition before a time therein designated not less than forty-eight hours after the service of such notice, or to appear before the county court of the county in which that part of the road is situated, at a time in said notice designated, and show cause why such turnpike or plank-road should not be repaired or put in good condition as in said notice directed. If such road shall not have been theretofore repaired or put in good condition as in said notice directed then the county court shall, upon the return of such notice hear the allegations and proofs of the parties, and it shall always be open for that purpose; and if the court shall find such road to be

Inspectors ; their powers and duties.

out of repair or in bad condition it may give additional time for the repair thereof, or it may order the gate nearest the place out of repair or in bad condition to be immediately upon the service of the order, or at a time therein specified, thrown open and to remain open until the road shall be fully repaired at the place directed to be repaired as aforesaid. Such order shall be served in the manner therein specified upon the keeper of the gate so ordered to be thrown open. Any inspector within the town, city or village where such road has been repaired pursuant to notice or order as aforesaid, may certify that such road has been duly repaired. The fees of the inspector for the services above mentioned shall be two dollars for each day actually employed, together with necessary witnesses fees, to be paid by the corporation or person whose road is so inspected, if the gates are ordered to be thrown open, but otherwise to be charged, audited and paid in the same manner as other fees of commissioners of highways. Any inspector who neglects to perform his duties shall forfeit to the party aggrieved the sum of twenty-five dollars for each offense. Every keeper of a gate ordered to be thrown open, not immediately obeying such order or not keeping such gate open until such road shall be fully repaired or until a certificate that such road has been duly repaired is granted, or hindering or delaying any person in passing, or taking any tolls from any person passing such gate during the time it ought to be open, shall forfeit to the party aggrieved the sum of ten dollars for each offense, and the corporation or person owning the road, who shall refuse or neglect to obey the requirements of any such order shall forfeit to the people of the state the sum of two hundred dollars for each offense.

Amended by L. 1896, ch. 343.

Change of route ; extension and branches.

§ 135. *Change of route ; extension and branches.*

—Any such corporation may, with the written consent of the owners of two-thirds of its capital stock and of a majority of the commissioners of highways of the town or towns, in which any change or extension is proposed to be made, construct branches to its main line or extend the same, or change the route of its road or any part thereof, and acquire the right of way for the same in the same manner as for the original or main line, and may, by any of its officers, agents or servants, enter upon lands for the purpose of making any examination, survey or map, doing no necessary damage; but before entering upon, taking or using such lands, the corporation shall make a survey and map thereof, designating thereon the lands of each owner or occupant intended to be taken or used, which shall be signed and acknowledged by the engineer making the same and the president of the corporation and filed in the office of the clerk of the county in which the land is situated.

§ 136. *Mile-stones, guide-posts and hoist-gates.*—A mile-stone or post shall be erected and maintained by every such corporation on each mile of its road, on which shall be fairly and legibly marked or inscribed the distance of such stone or post from the place of commencement of the road, and when the road shall commence at the end of any other road having mile-stones or posts on which the distance from any city or town is marked, a continuation of that distance shall in like manner be inscribed. A guide-post shall also be erected at the intersection of every public road leading into or from every turnpike or plank-road, on which shall be inscribed the name of the place to which such intersecting road leads in the direction to which the name on the guide-post shall point. No plank-road or turnpike corporation shall erect or put

Location of office of corporation.

up any hoist-gate on its road. Any person who shall wilfully break, cut down, deface or injure any mile-stone, post or gate on such road, or dig up, or injure any part of the road, or anything belonging thereto, shall forfeit to the corporation twenty-five dollars for every offense, in addition to the damages resulting from the act.

§ 137. *Location of office of corporation.*—Within two weeks after the formation of any such corporation its directors shall designate some place within a county in which its road or bridge, or some part thereof shall be contructed as its office, and shall give public notice thereof by publishing the same once in each week for three successive weeks in a public newspaper in the county, and shall file a copy of the notice in the office of the county clerk of every county in which any part of the road or bridge is, or is to be contructed, and if the location of such office shall be changed, like notice of the change shall be published and filed, in which shall be specified the time of making the change, before it shall take effect. Every notice, summons or other paper required by law to be served on the corporation may be served by leaving the same at such office with any person having charge thereof, at any time between nine o'clock in the forenoon, and five o'clock in the afternoon of any day except Sunday or a legal holiday.

§ 138. *Consolidation of corporations and sale of franchise.*—Any two or more of such corporations may consolidate into one corporation on such terms as the persons owning two-thirds of the stock of each corporation may agree upon, and may change the name of the road on filing in the office where the original certificates of incorporation were filed, a certificate containing the names

Surrender of road.

of the roads so consolidated, and the name by which such road shall thereafter be known. Any plank-road or turnpike corporation may, with the consent of the owners of sixty per cent. of its stock, sell, and convey the whole or any part of its rights, property and franchises to any other domestic plank-road or turnpike corporation, and such sale and conveyance shall vest the rights, property and franchises thereby transferred in the corporation to which they are conveyed for the term of its corporate existence.

§ 139. *Surrender of road.*—The directors of any plank-road or turnpike corporation ^{*}way abandon the whole or any part of its road at either or both ends thereof, upon obtaining the written consent of the stockholders, owning two-thirds of the stock of the corporation, which surrender shall be by a declaration in writing to that effect, attested by the seal of the corporation and acknowledged by the president and secretary. Such declaration and consent shall be filed and recorded in the clerk's office of the county in which any part of the road abandoned shall be situated, and the road so abandoned shall cease to be the road or the property of the corporation, and shall revert and belong to the several towns, cities and villages through which it was constructed, and the corporation shall no longer be liable to maintain it or to be assessed thereon, or permitted to collect tolls for traveling over the same, but without impairing its right to take toll on the remaining part of its road at the rate prescribed by law. And whenever any turnpike or plank-road company, now existing or hereafter created, shall abandon all or any part of its road within this state, in the manner above provided, or whenever its charter or franchise of such company shall be annulled or revoked, the road of such turn-

* So in the original.

Taxation and exemption.

pike or plank-road company shall revert to and belong to the several towns, cities and villages through which such road shall pass. And it shall be the duty of the several towns, cities and villages acquiring any road under this act to immediately lay out and declare the same a free public highway. And it shall be the duty of the several towns, cities and villages, to maintain and work every road acquired under the provisions of this act in the same manner as the other roads of such towns, cities and villages are maintained and worked. And any town, city or village may borrow money in the manner provided by law for the purpose of improving or repairing the same.

Amended by L. 1896, ch. 964.

§ 140. *Taxation and exemption.*—So much of any bridge or toll-house of any bridge corporation as may be within any town, city or village, shall be liable to taxation therein as real estate. Toll-houses and other fixtures and all property belonging to any plank-road or turnpike corporation shall be exempt from assessment and taxation for any purpose until the surplus annual receipts of tolls on its road over necessary repairs and a suitable reserve fund for repairs or relaying of plank, shall exceed seven per cent per annum on the first cost of the road. If the assessors of any town, village or city and the corporation disagree concerning any exemption claim, the corporation may appeal to the county judge of the county in which such assessment is proposed to be made, who shall, after due notice to both parties, examine the books and vouchers of the corporation, and take such further proof as he shall deem proper, and decide whether such corporation is liable to taxation under this section, and his decision shall be final.

Hauling logs and timber.

§ 141. ***Hauling logs and timber.***—Any person who shall draw or haul or cause to be drawn or hauled, any logs, timber or other material upon the bed of any plank or turnpike road, unless the same shall be entirely elevated above the surface of the road on wheels or runners, and the road-bed shall be injured thereby, or who shall do or cause to be done an act by which the road-bed, or any ditch, sluice, culvert or drain appertaining to any turnpike or plank-road shall be injured or obstructed, or shall divert or cause to be diverted, any stream of water so as to injure or endanger any part of such road, shall forfeit to the corporation the sum of five dollars for every offense in addition to the damages resulting from the wrongful act.

§ 142. ***Encroachment of fences.***—Whenever the president or secretary of any turnpike or plank-road corporation shall notify any inspector of such roads in the county where situated that any person is erecting or has erected any fence or other structure upon any part of the premises lawfully set apart for any such turnpike or plank-road, the inspector shall examine into the facts and order the fence or other structure to be removed if it shall appear to be upon any part of any such road, and any person neglecting or refusing to remove the same within twenty days or such further time not exceeding three months, as may be fixed by the inspector, shall forfeit to the corporation the sum of five dollars for every day, during which the fence or other structure shall remain upon such road, but no such order shall require the removal of any fence, previously erected, between the first day of December and the first day of April.

§ 143. ***Penalty for fast driving over bridges.***—Any plank-road, turnpike or bridge corporation may put up and

Acts of directors prohibited.

maintain at conspicuous places at each end of any bridge, owned or maintained by it, the length of whose span is not less than twenty-five feet, a notice with the following words in large characters: "One dollar fine for riding or driving over this bridge faster than a walk." Whoever shall ride or drive faster than a walk, over any bridge, upon which such notice shall have been placed, and shall then be, shall forfeit to the corporation the sum of one dollar for every such offense.

§ 144. *Acts of directors prohibited.*—No director of any such corporation shall be concerned, directly or indirectly, in any contract for making or working any road belonging to it during the time he shall be a director. No contractor for the making of such road, or any part thereof, shall make a new contract for the performance of his work, or any part of it, other than by hiring hands, teams, carriages or utensils to be superintended and paid by himself, unless such new contract and its terms be laid before the board of directors and be approved by them.

§ 145. *Actions for penalties.*—No action to recover any penalty against any turnpike or plank-road corporation, shall be commenced or maintained against it, or any of its officers or agents, unless commenced within thirty days after the penalty was incurred.

§ 146. *Proof of incorporation.*—In any action brought by or against any domestic turnpike or plank-road corporation, which shall have been in actual operation, and in possession of a road upon which it has taken toll for five consecutive years, next preceding the commencement of the action, parol proof of such corporate existence and use shall be sufficient to establish the incor-

When stockholders to be directors.

poration of the corporation, for all the purposes of the action, unless the opposing party shall set up a claim in his complaint or answer duly verified of title in himself to the road, or some part thereof stating the nature of his title and right to the immediate possession and use thereof.

§ 147. *When stockholders to be directors.*—When the whole number of stockholders in any turnpike or plank-road corporation shall not exceed the number of directors specified in the certificate of incorporation, each stockholder shall be a director of such corporation, and the stockholders shall constitute the board of directors, whatever may be their number, and a majority thereof shall be a quorum for the transaction of business.

§ 148. *Dissolution of corporation.*—Every turnpike, plank-road or bridge corporation may be dissolved by the legislature when, by the income arising from tolls, it shall have been compensated for all moneys expended in purchasing, making, repairing and taking care of its road, and have received in addition thereto an average annual interest at the rate of ten per cent., and on such dissolution all the rights and property of the corporation shall vest in the people of the state. Any such corporation, which shall not within two years from the filing of its certificate of incorporation, have commenced the construction of its road or bridge and actually expended thereon ten per cent of its capital, or which shall not within five years from such filing have completed its road or bridge, or, in case such bridge is destroyed, shall not rebuild the same within five years, or which, for a period of five consecutive years shall have neglected or omitted to exercise its corporate functions shall be deemed dissolved. Where the corporation has neglected or omitted for five years to

Towns must pay for lands not originally a highway.

exercise its corporate functions, and its road-bed or right of way shall have been used as a public highway for that period, or where any such corporation shall have become dissolved, or where the road or any part of it of a turnpike or plank-road corporation, or the bridge of any bridge corporation, shall have been discontinued, such road-bed or right of way, and such discontinued road or bridge, and the road or bridge of any such dissolved corporation, shall thereafter be a public highway, with the same effect as if laid out by the commissioners of highways of the town, and be subject to the laws relating to highways and the erection, repairing and preservation of bridges thereon.

See County Law, § 80, Appendix.

§ 149. *Towns must pay for lands not originally a highway.*—When the corporate existence of any plank-road or turnpike corporation shall have ceased by limitation of time, or where any judgment of ouster or dissolution, or restraining the exercise of its franchise has been rendered in any action against it, such portion of the line of its road as was built over lands which were originally purchased by it and not previously a public highway shall not be used as a public highway, nor be taken possession or control of by the town in which the same may be, or by any of the authorities thereof or be claimed or worked or used as a public highway until the town shall pay over to the treasurer, receiver or other legal representatives of the corporation, or its assigns, the principal sum of the amounts paid by it for such lands, as shown by the deeds of conveyance thereof to it, and every such judgment shall provide accordingly. Such payments shall be made within three months after the expiration of the corporate existence of the corporation, or if any such judgment has been or shall be rendered within three months after service of

Highway labor upon line of plank-road or turnpike.

written notice of the entry thereof on the supervisor of the town, and the person receiving such payment shall execute a proper discharge therefor and a conveyance to the town of all the title and interest which the corporation had in such lands at the expiration of its corporate existence.

§ 150. *Highway labor upon line of plank-road or turnpike.*—Every person liable for highway labor living or owning property on the line of any plank-road or turnpike may, on written application to the commissioners of highways of the town, on any day previous to making out the highway warrant by the commissioners, be assessed for the highway labor upon his property upon the line of such road, in the discretion of the commissioners to be worked out upon the line of such road as a separate road district, and the commissioners shall make a separate list of the persons and property so assessed, as for a separate road district, and deliver the same to one of the directors of the corporation owning such road, who shall cause such highway labor to be worked out on such road in the same manner that oversees* of highways are required to do, and such directors shall possess the powers and have the authority to compel the performance of such highway labor for the payment of the tax therefor as such oversees* now have by law, and shall make like returns to the commissioners of highways, and any person so assessed may commute for the highway labor assessed upon him or his property by paying the sum now fixed by law as the commutation for such highway labor.

§ 151. *Extension of corporate existence.*—No turnpike, plank-road or bridge corporation shall extend its corporate existence, pursuant to the provisions of the

* So in the original.

Extension of corporate existence.

general corporation law, without the written consent of the persons owning at least two-thirds of its capital stock, nor without the consent of the board of supervisors of each county in which any part of its road or bridge is situated, which consent shall be given by a resolution of the board adopted at any regular or special meeting, and a copy of such resolution, certified by the clerk of the board, or verified by the affidavit of some member thereof, together with such consent of the stockholders, and a statement verified by the affidavit of the president and treasurer of the corporation, showing the actual capital expended upon the construction of the road, exclusive of repairs, the name of each town or ward through or into which the road passes, and, if any part of the road shall have been abandoned, the actual cost of the remaining part, exclusive of repairs, shall be filed with the certificate of the continuance of the corporate existence. No further abandonment of any road belonging to a corporation whose corporate existence has been so extended shall be made, except with the consent of a majority of the board of supervisors of the county in which the abandoned portion of the road may lie, which consent shall be filed in the office of the clerk of the county.

Navigation law.

NAVIGATION LAW.

ARTICLE V.

RIVERS AND STREAMS AS PUBLIC HIGHWAYS.

SECTION 70. Dams and bridges.

71. Booms, etc., to be opened on notice, penalty for failure.
72. Shutes and aprons in connection with dams, etc., damages to be paid.
73. Marks on logs and timber to be recorded.
74. Persons prohibited from landing logs, etc.
75. Undertakings of persons floating lumber and logs.
76. Application of article.

SECTION 70. *Dams and bridges.*—No dam shall be erected on any river or stream in this state, recognized by law or use as a public highway for the purpose of floating and running lumber, logs or other timber, over or upon the same, unless there be built in such dam an apron, at least fifteen feet in width, in the middle of the current of such river or stream, of a proper slope for the safe passage of lumber, logs and other timber. No bridge shall be built over any such river or stream in such a manner as to obstruct or prevent the free and uninterrupted passage of lumber, logs and other timber down and along such river or stream.

§ 71. *Booms, etc., to be opened on notice; penalty for failure.*—Every person who shall build any boom or other obstruction in the waters of any river or stream, for

Shutes and aprons in connection with dams, &c., damages to be paid.

the purpose of stopping or securing lumber, logs or other timber, shall within ten days after the receipt of a written notice from any person who shall have lumber, logs or other timber to transport on such river or stream, open such boom or remove such obstruction or part thereof so as to permit the assorting and passage of such lumber, logs and other timber through and down such river or stream. Every person who wilfully obstructs, by booms or otherwise, the channel of any river or stream so as to hinder or delay the free passage of lumber, logs or timber over or through the same, shall be liable to a penalty of fifty dollars for each day of the continuance of such obstruction, to be recovered by the person aggrieved thereby, and in addition to such penalty, shall be liable for all damages caused by such obstruction.

§ 72. *Shutes and aprons in connection with dams, etc., damages to be paid.*—Any person desiring to float or run lumber, logs or timber down a river or stream, recognized by law or use as a public highway, may construct a shute or apron in connection with any dam across such river or stream, and may reconstruct any booms or other works already constructed in, over or across such river or stream, in such manner as to allow lumber, logs or other timber to pass the same, and may remove obstructions in such river or stream and construct such other piers, booms or other works as may be necessary for the passage of lumber, logs or other timber over and through the channels of such river or stream. In such constructions no injury or damage shall be done to the owner or occupant of any such booms, dams or other works, or to the owner or occupant of any land on which such piers, booms or other works are constructed, or lands flooded thereby. Every such person shall pay to the owner or occupant of such lands all damages he may sustain by

Marks on logs and timber to be recorded.

reason of the construction of such piers, booms, or other works, or the flooding of lands thereby. In case the amount of such damages can not be agreed upon by the parties interested, the same shall be appraised by three commissioners to be appointed by the county judge of the county in which the owner or occupant claiming damages shall reside, on the application of any person interested in the appraisal of such damages, on three days' notice in writing to the opposite parties of the time and place of making such application. Any person making claim for damages under this article, shall apply within one year after the occurrence of the same, or be debarred from recovering the same. This article shall apply to all booms or other works heretofore or hereafter constructed, but shall not be constructed so as to impair or abridge any private or individual rights, except so far as may be necessary for the improvement of rivers and streams, for floating or running lumber, logs or other timber down the same.

§ 73. *Marks on logs and timber to be recorded.*—Every person who shall run any logs or timber down any river or stream recognized by law or use as a public highway, shall select some mark different from any mark previously recorded, and shall put the same on each log or stick of timber in some conspicuous place, and shall cause such mark to be recorded in the county clerk's office of each county in or through which such river or stream runs. The county clerk shall be entitled to the sum of fifty cents for recording such mark, to be paid by the person having the same recorded, and a copy of said entry, certified by the clerk, shall be presumptive evidence that the logs or timber so marked are the property of the person by whom such mark was selected and recorded.

Persons prohibited from landing logs, etc.

§ 74. *Persons prohibited from landing logs, etc.*—

No person shall stop, take up or draw to, or lodge on the shore of any river or stream used for floating logs, timber or lumber, or on any island therein, any lumber, logs, timber, boards or planks floating in such river or stream, without the consent of the owner thereof. Any person violating the provisions of this section shall for each violation forfeit to the person aggrieved thereby the sum of ten dollars, and in addition thereto shall be liable to the owner of such logs, timber or lumber for all damages sustained thereby.

§ 75. *Undertakings of persons floating lumber and logs.*—Every person intending to float or run lumber, logs or other timber upon any river or stream recognized by law or use as a public highway, shall execute a bond to the people of the state with sufficient sureties in the sum of five thousand dollars as an indemnity against all loss and damage that may be caused to any property, by reason of the use of such river or stream as provided in this article, and such bond may be sued upon by any person suffering such loss or damage. Such bond shall be approved by the county judges of the counties through which such river or stream flows and shall be filed in one of the offices of the clerks of such counties, and certified copies thereof in the other of such offices. No person shall float or run any lumber, logs or timber upon such streams until such bond shall have been executed, approved and filed.

§ 76. *Application of article.*—This article shall not apply to the Hudson river, the Alleghany river and its tributaries, nor the Delaware river and its tributaries, nor the waters located in Franklin county, nor the Beaver

Application of article.

river and its tributaries, nor the Oswegatchie and its tributaries, nor the Grass river and its tributaries, nor the Racquette river and its tributaries, nor the West Canada creek and its tributaries, nor the Black river and its tributaries above its junction with the Moose river, nor the waters located in Lewis county used for floating or driving logs or lumber; nor be construed to repeal any existing law now applicable to any creek or river in this state.

Canal law.

CANAL LAW.

§ 110. *Alteration of roads.*—If the superintendent of public works, or assistant superintendent having charge of the work, deems it necessary to discontinue or alter any part of a public road, because of its interference with the proper location or construction of any work on the canals, either of construction, repairs or improvement, he shall direct such discontinuance or alteration to be made, and file an accurate description of the part of such road so discontinued and laid out anew in the office of the town clerk of the town in which the same is situated; and from the time of filing such description, such road shall be so altered.

The passage of the part of such road so discontinued or altered shall not be obstructed until such superintendent or his assistant opens and works the part of such road so laid out anew, as to render the same passable. The written certificate of a justice of the peace of the county in which such road is situated that the part so laid out anew has been so opened and worked, shall be sufficient evidence thereof. Every alteration made by any engineer on any public road upon either of the canals before the first day of January, 1828, shall be deemed valid in law from the time of such alteration.

§ 111. *Farm and road bridges.*—The superintendent of public works is authorized and required to construct and hereafter maintain, at the public expense, road and street bridges over the canals, in all places where such bridges were constructed prior to the 20th day of April,

Commutation for bridges.

1839, if, in his opinion, the public convenience requires that they should be continued, whether theretofore maintained at the expense of the state or of the towns, villages and cities where they are situate.

The superintendent is authorized to construct farm bridges over such canals when the same, in his opinion, are reasonably required, having reference to the accommodation of the owners of the land and a due regard to economy to the state and the convenience of navigation. But this provision does not abridge the power of the superintendent in relation to streets, roads and bridges as prescribed by law on the date above specified.

When a farm bridge is constructed in lieu of one theretofore maintained by the owner of the land and damages are claimed by such owner for the appropriation of lands or other injury done in the enlargement of the canals, the benefit derived by the owner by being relieved from the expense of maintaining the farm bridge over the canal shall be set off against any damages so claimed.

§ 112. *Commutation for bridges.*—The superintendent of public works may commute with owners and claimants of bridges over any canal, by paying such owner or claimant such sum in lieu of a bridge as may be agreed on between the claimant and the superintendent. If, in the opinion of the superintendent, a bridge should not be rebuilt, and the amount to be so paid be not agreed upon, the bridge shall not be built, but the damages sustained by such owner by being deprived of such bridge, and which the state under all the circumstances ought of right to pay, shall be ascertained in the same manner as damages for the appropriation of real property for the use of the canals, and paid by the superintendent. If the damages be claimed for the deprivation of a bridge which the claimant had before constructed or maintained, the cir-

Private road in lieu of bridge.

cumstance of his being equitably bound to contribute proportionately towards the construction and maintenance of an enlarged bridge shall be taken into consideration and a proper amount on that account shall be set off against any damage to which the claimant might otherwise be entitled.

§ 113. *Private road in lieu* of bridge.*—If the superintendent of public works can not agree with the owner of a farm bridge over a canal, as to the amount of commutation, in any case where such superintendent is of opinion that the state should erect such bridge, and such superintendent determines that a private road through adjoining lands will sufficiently accommodate such owner and that the same can be laid out with economy to the state, he may apply to the commissioners of highways of the town to lay out a private road for the accommodation of the owner, in the manner prescribed by law for laying out private roads, and pay to the owner of the lands through which the same is laid out the damages assessed.

§ 114. *Iron bridges.*—When the construction of an iron bridge over a canal is ordered by the legislature, or required by the superintendent of public works, the state engineer shall prepare a plan and general specifications for the construction of such bridge and submit the plan to the canal board. On obtaining the certificate of adoption by the canal board he shall file the plan so approved in his office and a copy thereof in the office of the superintendent of public works, who shall then advertise for proposals for the work, and award the contract to the lowest responsible bidder.

* So in the original.

Models and location of bridges.

§ 115. *Models and location of bridges.*—No bridge shall be constructed across any canal without first obtaining for the model and location thereof the written consent of the superintendent of public works or of a superintendent of repairs upon that line of the canal which is intersected by the road or highway of which the bridge is to be a part.

Every person undertaking to construct or locate any such bridge without such consent and placing any materials for that purpose upon either bank of the canal or upon the bottom thereof, shall forfeit to the state the sum of fifty dollars, and the superintendent of public works or any assistant superintendent, superintendent of repairs or engineer may remove all such materials as soon as they are discovered, wholly without the banks of the canal.

§ 116. *Restriction on the construction of farm and road bridges.*—A person shall not be entitled to demand a farm bridge across a canal or feeder where the necessity or convenience of such bridge shall have arisen from the division or acquisition of property subsequent to the location of such canal or feeder. A street or road bridge shall not be constructed by the superintendent of public works over a canal or feeder, except upon such streets or roads as were laid out, worked or used previously to the construction of the canal or feeder by which such street or road was or is obstructed; and when bridges are constructed or reconstructed upon any such streets or roads, the cost to the state shall in no case be more than is required to preserve in a safe and substantial manner the continuity of such streets or roads so as not to unnecessarily impair their usefulness.

When a bridge of a more costly nature is desired by the local authorities of a city, town, or village within whose corporate limits a bridge is to be built or rebuilt, the superintendent of public works, on presentation to him by such

Construction of bridges by municipal corporations.

local authorities of plans and specifications for such bridge, approved by the state engineer, shall estimate and determine the proportion of the cost, which, in order to preserve the continuity of such streets and roads, the state ought equitably to pay, and file such estimate and determination in his office and a duplicate thereof in the office of the clerk of such city, town or village, and no more than such proportion of the cost shall be appropriated by the legislature for such purpose, and then only on condition that such city, town or village shall pay the remainder of such cost. If a private road or public highway is laid out by legal authority in such direction as to require the erection of a new bridge over a canal for the accommodation of the road, such bridge shall be so constructed and forever maintained at the expense of the town or city in which it shall be situated.

§ 117. *Construction of bridges by municipal corporations.*—A town, village or city upon the line of any canal, at its own cost and expense, with the consent and under the direction of the superintendent of public works, may erect and maintain at any point within its limits, where a bridge is not maintained by the state, such bridge across such canal, of such kind, dimensions and materials, and with such approaches as such superintendent approves, at the proper cost and expense of such town, village or city, at any point where there is not now a bridge built and maintained by the state. If such bridge shall be a hoist, lift or swing-bridge, and requires the constant attendance of bridge tenders to manage and work it, the superintendent may appoint and remove such bridge tenders as he deems necessary, and the expenses and wages thereof shall be paid to the superintendent by such town or village when he may require it, to be paid by him to such bridge tenders, and all the cost of material, power or tools neces-

Construction of lift, hoist or swing-bridge by city.

sary for the tending of such bridge shall be paid for by such town or village on demand therefor by the superintendent.

§ 118. *Construction of lift, hoist or swing-bridge by city.*—The common council of any city may provide by ordinance for the erection of a lift, hoist or swing-bridge over a canal at any street in such city, and, if the superintendent of public works consents to such erection, in writing, filed with the clerk of such common council, may levy and assess the cost of the construction of such bridge on the property benefited thereby. Such bridge shall be built, operated and maintained under the supervision and control of such superintendent, but at the expense of such city or of the property adjudged by the common council thereof to be so benefited.

§ 176.

A person who leads, rides or drives any horse or mule faster than a walk over any bridge belonging to or under the control of the state, over any canal, canal feeder, stream or river thereof, or drives any cattle across any such bridge at a faster rate than a walk, or permits more than twenty-five cattle to be upon such bridge at any one time, shall forfeit to the state the sum of fifteen dollars, to be sued for by the superintendent of canal repairs, and when recovered to be accounted for by him to the commissioners of the canal fund.

RAILROAD LAW.

§ 4. *Additional powers conferred.*—Subject to the limitations and requirements of this chapter, every railroad corporation, in addition to the powers given by the general and stock corporation laws, shall have power.

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4. *Intersection of streams, highways, plank-roads, turnpikes and canals.*—To construct its road across, along or upon any stream, water-course, highway, plank-road, turnpike, or across any of the canals of the state, which the route of its road shall intersect or touch.

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§ 11. *Intersection of highways, additional lands for.*—No railroad corporation shall erect any bridge or other obstruction across, in or over any stream or lake, navigated by steam or sail boats at the place where it may be proposed to be erected, nor shall it construct its road in, upon or across any street of any city without the assent of the corporation of such city, nor across, upon or along any highway in any town or street in any incorporated village, without the order of the supreme court of the district in which such highway or street is situated, made at a special term thereof, after at least ten days' written notice of the intention to make application for such order shall have been given to the commissioners of highways of such town, or board of trustees of the village in which such highway or street is situated. Every railroad corporation which shall build its road along, across or upon any stream, water-course, street, highway, plank-road or

Corporation may lay down railroad tracks.

turnpike, which the route of its road shall intersect or touch, shall restore the stream or water-course, street, highway, plank-road and turnpike, thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness, and any such highway, turnpike or plank-road may be carried by it, under or over its track, as may be found most expedient. Where an embankment or cutting shall make a change in the line of such highway, turnpike or plank-road desirable, with a view to a more easy ascent or descent, it may construct such highway, turnpike or plank-road, on such new line as its directors may select, and may take additional lands therefor by condemnation if necessary. Such lands so taken shall become part of such intersecting highway, turnpike or plank-road, and shall be held in the same manner and by the same tenure as the adjacent parts of the highway, turnpike or plank-road are held for highway purposes. Every railroad corporation shall pay all damages sustained by any turnpike or plank-road corporation in consequence of its crossing or occupation of any turnpike or plank-road, and in case of inability to agree upon the amount of such damages it may acquire the right to such crossing or occupation by condemnation.

§ 20. *Individual, joint stock association, or other corporation may lay down and maintain railroad tracks in certain cases.*—Any individual, joint stock association or corporation, engaged in any lawful business in this state, may, except in any city of the state, lay down and maintain such railroad tracks on or across any street or highway, not exceeding three miles in length, as shall be necessary for the transaction of its business, and to connect any place of business owned by them with the track of any railroad corporation, and render such place of business more accessible to the public, upon obtaining

Sign boards and flagmen at crossings.

the written consent of the owners of all the lands bounded on and of the local authorities having control of that portion of the street or highway, upon which it is proposed to construct or operate such railroad. If the consent of such property owners can not be obtained, the general term of the supreme court of the department in which such railroad is to be constructed, may upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and the amount of damages, if any, to be paid to such property owners, and their determination confirmed by the court may be taken in lieu of the consent of the property owners. But no such railroad shall be so located, graded, built or operated as to interfere with or obstruct the traveled part of any highway, or its use as a highway, or the use of any street or highway intersecting the same.

§ 33. *Sign boards and flagmen at crossings.*—

Every railroad corporation shall cause boards to be placed, well supported and constantly maintained across each traveled public road or street, where the same is crossed by its road at grade. They shall be elevated so as not to obstruct travel, and to be easily seen by travelers; and on each side shall be painted in capital letters, each at least nine inches in length and of suitable width, the words: "Railroad crossing; look out for the cars;" but such boards need not be put up in cities and villages, unless required by the officers having charge of the streets. At any point where a railroad crosses a street, highway, turnpike, plank-road, or traveled way at grade, or where a steam railroad crosses a horse railroad at grade, and the corporation owning or operating such railroad, refuses, upon request of the local authorities to station a flagman or erect gates, to be opened and closed when an engine

Sign boards and flagmen at crossings.

or train passes, the supreme court or the county court may, upon the application of the local authorities and upon ten days' notice to the corporation, order that a flagman be stationed at such point, or that gates shall be erected thereat, and that a person be stationed to open and close them when an engine or train passes, or may make such other order respecting the same as it deems proper. Whenever the crossings by a railroad at grade of the streets, highways, turnpikes, plank-roads, or traveled ways of any village or city, having a population by the last state or federal enumeration of less than fifty thousand, shall be protected by gates with persons to open and close the same, when an engine or train passes, the local authorities of the city or village shall not impose any limitation, less than forty miles an hour, on the rate of speed at which such engine or train shall be run, or enforce any existing limitation upon such rate of speed, less than forty miles an hour.

Amended by L. 1892, ch. 676.

Indian law.

INDIAN LAW.

§ 12. *Highways on tribal lands.*—Commissioners of highways of towns in which an Indian reservation is wholly or partly situated shall have the same power and jurisdiction over the portion of the reservation in their respective towns, to improve highways already laid out therein, as is conferred upon such commissioners by the highway law, except that the written decision of the commissioners shall be served upon the agent, attorney or some other officer of the nation, tribe or band occupying such reservation; from which decision, such Indians may, within sixty days after the service thereof, appeal to the county judge of the county in which such lands are situated, whose decision shall be final. Such commissioners of highways may, with the consent of the tribal or national authorities of the nation, tribe or band occupying such reservation, lay out and establish as provided by law, highways on or across such reservation, and the highway commissioners of the town shall thereafter be charged with the maintenance of such road and the bridges thereon. This section shall not authorize the taxation of an Indian who is not a citizen.

§ 73. *General powers and duties of the council.*—The council of the Seneca nation shall meet annually on the first Tuesday in June, and in extra session whenever called by the president. Ten of the councilors shall be necessary to constitute a quorum for the transaction of business. The council shall have power,

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3. To determine on the laying out and working of roads

General powers and duties of council.

and highways, and to make by-laws for the regulation of such work.

Amended by L. 1893, ch. 229.

§ 80. *General powers and duties of council.*—The council of the Tonawanda nation may determine upon the laying out and working of roads and highways, and may make by-laws for the regulation of such work; may pass by-laws and ordinances, not inconsistent with law, for the protection and improvement of the common land of the nation; for the regulation of fences, and for the prevention of trespasses by cattle and other domestic animals; and may provide a penalty of not exceeding five dollars, for the violation or disobedience of any such by-law or ordinance, recoverable for the benefit of such nation by any chief or officer thereof, in any justice's court of the county of Genesee.

§ 94. *Highway labor.*—Such chiefs, in council, may annually, before the first day of July, assess such amount of highway labor as they shall deem just and reasonable, not exceeding fifteen days in any one year, upon each male Indian of full age. The number of days work and the name of the individual assessed shall be entered upon the roll made and signed by such chiefs or by the president of the council, under their direction. Such chiefs may also designate suitable persons to superintend the highway labor, and the plan and manner of its application. The persons so designated shall give notice to those assessed to perform such labor, and at least twenty-four hours' notice of the time of performance. If any person so assessed, after being notified, shall neglect or refuse to perform such labor, he shall be liable to a penalty of seventy-five cents for each day's labor assessed, to be recovered by an action

Highway labor.

in the name of the nation, in which action the assessment-roll shall be conclusive evidence of the regularity of the assessment. For the purpose of such action, such Indian shall be regarded as an inhabitant of the town of Lewiston, Niagara county, and the proceedings shall be the same as between citizens. Any paper may be served upon such nation as a party by delivering it to any two chiefs personally.

This section applies to the Tuscarora Nation.

Laws 1817, chapter 83.

MISCELLANEOUS LAWS RELATING TO HIGHWAYS.

LAWS 1817, CHAPTER 83.

AN ACT *relative to state roads.*

WHEREAS great inconvenience has arisen from the want of authority in the commissioners of highways, of the several towns in this state, to alter and amend such highways as are laid out by special acts of the legislature, commonly called state roads; and in order to prevent application being made to the legislature for every alteration in said roads, as are supposed to be necessary,—Therefore,

Be it enacted by the people of the State of New York, represented in Senate and Assembly, That it shall be lawful for the commissioners of highways of any town in this state, through which a state road passes, on being applied to by twelve freeholders of such town, and with the consent of the commissioners of highways of the adjoining towns through which said road passes, to regulate and alter such road, in the said town, if in their opinion the public good and convenience shall require the same: Provided however, That no such alteration shall alter the general route of the road: And also, That the provisions of the act, entitled “An act to regulate highways,” relative to the alteration and amendment of public roads, shall be held to extend to such alteration, as aforesaid, of any state road.

Laws 1835, chapter 300.

LAWS 1835, CHAPTER 300.

AN ACT to enlarge the powers of commissioners of highways.

SECTION 1.—Whenever any association or individual shall construct a railroad upon land purchased for that purpose, on a route which shall cross any road or other public highway, it shall be lawful for the commissioners of highways, having the supervision thereof, to give a written consent that such railroad may be constructed across, or on such road or other public highway; and thereafter such association or individual shall be authorized to construct and use such railroad across, or on such roads or other highways as the commissioners aforesaid shall have permitted; but any public highway thus intersected or crossed by a railroad, shall be so restored to its former state as not to have impaired its usefulness.

LAWS 1853, CHAPTER 62.

AN ACT to regulate the construction of roads and streets across railroad tracks.

§ 1. It shall be lawful for the authorities of any city, village or town in this state, who are by law empowered to lay out streets and highways, to lay out any street or highway across the track of any railroad now laid or which may hereafter be laid, without compensation to the corporation owning such railroad; but no such street or highway shall be actually opened for use until thirty days after notice of such laying out has been served personally upon the president, vice-president, treasurer or a director of such corporation.

§ 2. It shall be the duty of any railroad corporation,

Laws 1853, chapter 62.

across whose track a street or highway shall be laid out as aforesaid, immediately after the service of said notice, to cause the said street or highway to be taken across their track, as shall be most convenient and useful for public travel, and to cause all necessary embankments, excavation and other work to be done on their road for that purpose; and all the provisions of the act, passed April second, eighteen hundred and fifty, in relation to crossing streets and highways, already laid out, by railroads, and in relation to cattle,* guards and other securities and facilities for crossing such roads, shall apply to streets and highways hereafter laid out.

(The reference in this section to L. 1850, ch. 140, which is repealed, must now be deemed a reference to the Railroad Law.)

§ 3. If any railroad corporation shall neglect or refuse, for thirty days after the service of the notice aforesaid, to cause the necessary work to be done and completed, and improvements made on such streets or highways across their road, they shall forfeit and pay the sum of twenty dollars for every subsequent day's neglect or refusal, to be recovered by the officers laying out such street or highway, to be expended on the same; but the time for doing said work may be extended, not to exceed thirty days, by the county judge of the county in which such street or highway, or any part thereof, may be situated, if, in his opinion the said work cannot be performed within the time limited by this act.

* So in the original.

Laws 1862, chapter 220.

LAWS 1862, CHAPTER 220.

Relating to State Asylum for Idiots.

§ 10. *Exemption of officers.*—The resident officers of the asylum and all the teachers, attendants and assistants actually employed therein, during the time for such employment shall be exempt . . . from all assessments for labor on the highways . . . ; and the certificate of the superintendent shall be conclusive evidence of such employment.

LAWS 1869, CHAPTER 131.

AN ACT *for the erection and maintenance of watering troughs in the public highways.*

§ 2. *Abatement of toll on plank-roads for watering troughs.*—The directors of the several plank-road and turnpike road companies in this state shall annually abate three dollars from the toll of any inhabitant, not an inn-keeper, or all of it if in the aggregate not exceeding that sum, who shall construct on his own land, and keep in repair, a watering trough beside the plank-road or turnpike road as the case may be, well supplied with fresh water, the surface of which shall be two or more feet above the level of the ground, and easily accessible for horses with vehicles; but the commissioners of highways of the towns respectively shall, and they are hereby invested with full power and authority to designate those necessary for the public convenience along said plank-road or turnpike road, as the case may be, and no others than those designated shall be allowed both such abatement of toll and highway labor.

Added by L. 1872, ch. 274.

Laws 1869, chapter 131.

§ 3. Duty of commissioners in case of refusal of directors to abate toll; penalty.—In case the directors of any plank-road or turnpike road company in this state, shall refuse or neglect to abate the toll as aforesaid, in compliance with the provisions of the preceding section, any inhabitant having constructed a watering trough in compliance therewith, may notify the commissioner or commissioners of highways, as the case may be, of the town in which the same had been erected, of such neglect or refusal on the part of the directors aforesaid, whose duty it shall be, and who are hereby invested with full power and authority to proceed, without delay, to an examination of said watering trough; and if, upon a full examination of the same, the said commissioner or commissioners, as the case may be, or a majority of them, shall deem it necessary for the convenience of the public that such watering trough ought to be maintained, he or they, as the case may be, shall forthwith notify the said directors accordingly, by serving a written notice on the president of the company, to that effect, in which the necessity of its maintenance shall be clearly expressed; and if the said directors shall still refuse or neglect to abate the toll as aforesaid, and shall demand and take toll, on application for such abatement, in violation of the provisions of the preceding section, for the space of thirty days after the service of such notice, they shall be liable to a penalty of twenty dollars, to be recovered in an action at law at the suit of the person having constructed said watering trough.

Added by L. 1872, ch. 274.

Laws 1870, chapter 311.

LAWS 1870, CHAPTER 311.

AN ACT to provide for repairing and keeping in order highways, streets and roads between cities, towns and villages.

SECTION 1. Whenever a highway, street or road shall be on the line between a city, town or village, or between either of them, the officers authorized and required to repair and keep in order the highways, streets and roads in such city, town, and village, shall meet together at the mayor's office in such city, if said highway, street or road be on the line between a city and town or a city and village, or at the office of the town clerk of such town, if the same be on the line between a town and village, on the first Monday of May in each year, at 12 o'clock M. and divide such highway, street or road, and allot one part thereof to such city and the other to such town or village, or one part thereof to such town and the other to such village, as the case may be, in such manner that the labor and expense of working and keeping in repair such highway, street or road may be equal as near as may be.

§ 2. Upon the neglect or failure to attend on the part of the officers of any city, town or village, at the time or places designated in the first section of this act for the purposes therein mentioned, the officers of the city, town or village present may perform the said duty, and when done, the divisions thus made shall be of the same force and effect as if made by the joint action of such city and town, or such city and village, or such town and village.

§ 3. The statement of the division made pursuant to the provisions of the first or second section of this act shall be reduced to writing and properly authenticated by the officers making the same, and shall be filed within

Laws 1871, chapter 171.

ten days after such division is made in the offices of the city clerk of the city, of the town clerk of the town, and of the clerk of the village, between whom such division has been made.

§ 4. This act shall take effect immediately.

LAWS 1871, CHAPTER 171.

AN ACT *in relation to assessment of highway labor in certain cases.*

SECTION 1. In all cases where there is an incorporated village or city within the limits of any town, which is by law a separate road district, and there shall be any real estate, owned by any person or corporation, situated partly within the limits of such village or city and partly without said village or city, it shall be the duty of the assessors of such town, after fixing the valuation of the whole of such real estate as now by law required, to determine what proportion of such valuation is on account of that part of said real estate lying without the limits of said city or village, and designate the same upon their assessment list.

§ 2. The valuation of the real estate lying without the limits of any city or village, so fixed and determined by the assessor, shall be the valuation on which the commissioners of highways of towns shall assess highway labor against the owner or owners of such real estate; and in no case shall the commissioners of highways assess any highway labor on property situated within the limits of any incorporated city or village which is by law a separate road district.

§ 3. This act shall take effect immediately.

Laws 1879, chapter 317.

LAWS 1879, CHAPTER 317.

AN ACT to authorize the laying of pipes in the streets, avenues, and public places in the various cities, towns, and villages of the state, for heating and other purposes.

SECTION 1. The municipal authorities of the cities, towns, and villages of the State of New York are hereby authorized and empowered to carry out the provisions of this act.

§ 2. Any corporation or association formed or organized under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or other chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, or under any of the amendments to said act, or under the "Act to provide for the organization and regulation of certain business corporations," passed June twenty-first, eighteen hundred and seventy-five, shall have full power to manufacture, furnish, and sell such quantities of hot water, hot air, or steam as may be required in the city, town, or village where the same shall be located; and such corporation shall have power to lay pipes or conductors for conducting hot water, hot air, or steam through the streets, avenues, lanes, alleys, squares, and highways in such city, village, or town, with the consent of the municipal authorities of said city, town, or village, and under such reasonable regulations and conditions as they may prescribe; and whenever any such permission shall be granted, it shall only be upon the condition that reasonable compensation shall be paid therefor, and upon a further condition that a satisfactory bond shall be given to secure the city, town, or village against all damages in the use of said pipes. The amount of the compensation, and the manner of its payment, and the amount of the bond shall be first fixed

Laws 1881, chapter 344.

and determined by said municipal authorities, before any pipes, as provided for by this act, shall be laid in any city, town, or village of this state, and that all such permissions heretofore given by any of said municipal authorities, where the above terms have been complied with, are hereby confirmed.

LAWS 1881, CHAPTER 344.

AN ACT to amend chapter two hundred and fifteen of the laws of eighteen hundred and seventy-five, entitled "*An act to prevent the mutilation of shade or ornamental trees.*"

SECTION 1. Section one of chapter two hundred and fifteen of the laws of eighteen hundred and seventy-five, entitled "*An act to prevent the mutilation of shade or ornamental trees,*" is hereby amended so as to read as follows:

§ 1. It shall be unlawful for any person or persons whatsoever, in this state, to hitch any horse or other animal to, or leave the same standing near enough to, to injure any fruit or forest tree that has been transplanted or used as a shade or ornamental tree around any school house, church or public building, or along any public highway, or to cut down or mutilate, in any way, any such ornamental or shade trees; but the right of property owners along highways to cultivate, train and use such shade trees shall not be impaired or abridged hereby.

§ 2. Section two of said act is hereby amended so as to read as follows:

§ 2. Any person or persons guilty of violating the pro-

Laws 1883, chapter 113.

visions of section one of this act shall be liable to prosecution by any person, before any justice of the peace in the town where the offense is committed, and punishable by a fine not exceeding ten dollars, nor less than one dollar, besides the costs of action for each offense or for each tree cut down or mutilated in violation of the provisions of this act; and every such penalty, when collected, shall be paid by the justice, one-half to the overseer of the poor of the town in which recovery was had, and the remainder to complainant, and the same process and means for the collection of the penalties imposed by this act may be issued and had as are now allowed by law for the collection of damages in actions of tort, but no provision of this act shall operate to interfere with any ordinance of the incorporation of villages and cities of this state, intended to secure the protection of shade trees therein.

§ 3. This act shall take effect immediately.

LAWS 1883, CHAPTER 113.

AN ACT *in relation to alterations of highways, streets or bridges in incorporated villages.*

SECTION 1. ***Provision to ascertain damage.***—Whenever the grade of any street, highway or bridge in any incorporated village in this state shall be changed or altered so as to interfere in any manner with any building or buildings situated thereon, or adjacent thereto, or the use thereof, or shall injure or damage the real property adjoining such highway so changed or altered, the owner or owners of such building or real estate may apply to the supreme court in the judicial district in which such property is situated for the appointment of three commissioners

Laws 1883, chapter 113.

to ascertain and determine the amount of damage sustained thereby; due notice of such application shall be given to the person or persons having competent authority to make such change or alteration.

§ 2. *Condemnation law to apply.*—All the provisions of the condemnation law relative to the appointment of commissioners, their powers, duties, fees and expenses, shall be applicable to the appointment of, and the powers, duties, fees and expenses of the commissioners appointed in pursuance of the provisions hereof; but it shall be the duty of said commissioners in assessing and ascertaining the damages sustained by property owners adjoining such street or highway to take into consideration and to ascertain the value of any benefits or advantages to the property in consequence of the alteration of the grade; and in all cases the value of such benefits or improvements shall be offset against and deducted from the damages; and no person or property owner shall be entitled to recover any damages who shall, in writing, request or assent that the said grade of any such street shall be changed or altered.

Amended by L. 1884, ch. 281, and by L. 1894, ch. 172.

§ 3. *Damages a public charge.*—All damages ascertained and determined under the provisions of this act, together with the costs of such proceedings, shall be a charge, when allowable, upon the village, town or other municipality chargeable with the maintenance of the street, highway or bridge so altered or changed; but no property owner or person instituting proceedings to recover damages under the provisions of this act shall be entitled to costs, unless the claim for such damages shall have first been presented to and rejected by, or neglected to have been adjusted for thirty days after presentation by the trustees or other proper officers of said village, town or

Laws 1890, chapter 291.

municipality, nor in case such trustees or other proper officers shall have made an offer to settle or compromise such claim, which offer is declined by said property owner, unless he shall recover more than is so offered; and in case he fails to recover any damages, or less than offered, he shall be liable for the costs of such proceeding. When either party is entitled to costs under this section, they shall be the same costs, and at the same rates as prescribed in the condemnation law, and the court may grant an additional allowance of costs to the prevailing party at the same rates as provided by the condemnation law.

Amended by L. 1884, ch. 281, and by L. 1894, ch. 172.

LAWS 1890, CHAPTER 291.

AN ACT to authorize towns to raise additional money for highway purposes and to prevent snow blockade of highways by the substitution of wire for other fences along the same.

SECTION 1. It shall be lawful for the commissioner of highways of any town in this state to apply in open town meeting for a vote authorizing such sum, not to exceed three hundred dollars in any one year, to be raised, in addition to the sums now allowed by law, as they may deem necessary for the purpose specified in the third section of this act. The same notice shall be given by the commissioners of their intention to apply for the raising of such additional sum as is now required by law for the raising of money for roads and bridges, above the amount of two hundred and fifty dollars.

§ 2. If the town meeting shall, by their votes, deter-

Laws 1890, chapter 291.

mine that a sum shall be raised for the purpose specified in this act, the proceedings for certifying and levying, collecting and paying the same shall be in all respects the same as now provided by law for the raising and paying over of money for roads and bridges, above the amount of two hundred and fifty dollars.

§ 3. The commissioners of highways shall expend the money raised under the provisions of this act in the purchase of fence wire, in the same manner as other supplies for highway purposes are by law required to be purchased, and no part of such money shall be expended, except for the purchase of fence wire as aforesaid; and the said commissioners are hereby authorized to contract with the owners of the lands lying along the highways of their respective towns, at such points as are liable to snow blockade, for the removal of the fences now standing along the boundaries of such highways, and the replacing of such fences with wire fences. And they may contract to deliver to said land owners, fence wire to be used in the construction of such fences, without charge to said land owners, at the place of purchase, but they shall not agree to pay any part of the cost of the removal or construction called for by said contracts, or to make any payment to said land owners as a compensation for the construction of fences.

§ 4. The fences to be built under the provisions of this act, shall be of four strands of wire with a substantial bar of wood at the top; and the construction of said fences, and the size of said top bars and of the posts and supports of said fences, and their distance apart shall be such as said commissioners shall prescribe. Whenever such fence or fences shall become so out of repair as to be dangerous to animals passing along the highways, it shall be the

Laws 1890, chapter 332.

duty of the owner or owners of said fence or fences to immediately repair or remove the same.

§ 5. Whenever the commissioner of highways of any town shall contract for the removal of any fence, under the provisions of this act, they shall file in the office of the town clerk of said town, a description of that portion of the highway to which said contract shall apply, and thereafter, it shall not be lawful for any person to replace the fence so contracted to be removed, with any fence liable to cause the drifting of snow.

§ 6. This act shall take effect immediately.

LAWS 1890, CHAPTER 332.

AN ACT to authorize the supervisor, justices of the peace and town clerk of any town having a population of more than three thousand, to license and regulate all public hacks, vehicles, venders, shows, concerts and public amusements in such town.

SECTION 1. The supervisor, justices of the peace and town clerk of any town having a population as shown by the last federal or state enumeration, of more than three thousand inhabitants residing outside of an incorporated city or village, are hereby authorized and empowered to license and regulate all public hacks, vehicles, venders, shows, concerts and public amusements in such town, outside* of an incorporated city or village, and to fix the fee to be paid for the persons so licensed to said officers, which moneys so collected shall be paid over to the super-

* So in the original.

Laws 1890, chapter 555.

visor of such town within thirty days after the receipt of the same, and the said supervisor shall pay the same over to the commissioners of highways of such town, to be applied to the necessary repairs of the roads and highways of such town, after deducting the necessary expenses for carrying out the provisions of this act.

The remaining sections have no application to highways.

LAWS 1890, CHAPTER 555 (APPLICABLE TO RICHMOND COUNTY ONLY.)

AN ACT *to provide for the improvement and maintenance of the public roads in certain counties as county roads.*

SECTION 1.—In every county not exceeding two hundred square miles in area, it shall be lawful for the board of supervisors thereof to acquire and assume, for the purpose of improving and maintaining the same, the full and exclusive control of any public road or roads, or part thereof, in such county, so far as may be necessary only for the said purpose of improving and maintaining the roadbed thereof as a road or roads for carriages or other vehicles, but for no other purpose. In order to acquire and assume such control in any county, with power to improve and maintain the same, the said board shall cause a map to be made, or adopt a map already made, on which the principal public roads or highways of the county shall be, or are, laid down, and shall cause the roads or parts of roads of which the said board intends to acquire and assume such control to be plainly indicated thereon and shall file the said map, when so marked and certified by it, in the office of the clerk of the county; whereupon the roads or parts of roads so marked or indicated on said map shall be-

Laws 1890, chapter 555.

come and be known as "county roads," and shall thereafter be improved, maintained and kept in repair by the board of supervisors of such county in the manner hereafter provided, and it shall be lawful for such board of supervisors, from time to time, to assume control of and establish other roads or parts of roads as county roads, and improve and keep the same in repair, as aforesaid, or to relinquish control of any road or part of any road so acquired, in either of which cases the said map shall be changed accordingly, and the assuming or relinquishing the control of any public road shall be by resolution, in writing, entered upon the minutes of the board, and a copy thereof, certified by the clerk of the board, shall be filed forthwith in the office of the county clerk. If any road, or part thereof, so to be improved or repaired, shall pass through any village, it shall be necessary to obtain the consent of the board of trustees of such village before the board of supervisors shall assume the control, improvement or repair of that portion thereof lying within such village, and such board of trustees are hereby authorized and empowered to grant or give such consent. The term "road," as used in this act, shall be construed to include street, avenue or other public highways.

§ 2. Upon the establishment, in the manner above provided, of any county road or roads, the board of supervisors of such county shall forthwith cause the said county roads to be improved and put in repair, and shall thereafter maintain and keep the same in repair and in good condition, in the manner hereinafter provided.

§ 3. The said board of supervisors shall by resolutions duly entered upon their minutes from time to time, estimate and determine what sums of money will be required to improve said county roads. They are hereby authorized

Laws 1890, chapter 555.

and directed to borrow such sums of money thus determined upon as needed for such improvement, on the credit of the county, which sums so borrowed, however, shall not exceed, in any year, an amount, which, with then outstanding bonded indebtedness of said county, shall be in excess of ten per centum of the assessed valuation of such county as shown in the assessment-rolls of the preceding year, and the board of supervisors shall prescribe by resolution, the form of obligation to be issued on such loan or loans and the times and the place of payment, the time not to exceed twenty-five years from the date of the obligations, so to be issued and the rate of interest not to exceed the legal rate. The chairman and clerk of the board of supervisors shall indorse on each of such bonds or obligations that it is issued by and in accordance with the directions of the board of supervisors and shall sign such certificate in their official capacity. The said board of supervisors shall raise, in their annual tax levy, a sum deemed sufficient to keep and maintain the said county roads in good order and repair, or in default thereof, it shall, in like manner, raise, by the issue and sale of bonds as aforesaid, from time to time such moneys as they shall by resolution determine, and as shall be required for the necessary repairs of such road and to keep them constantly in good order and condition, not however, exceeding in amount the limit above provided. The board of supervisors shall keep a record showing the dates and amounts of such bonds, the times and place when and where the same are made payable and the rate of interest thereon; and such board shall have power and it shall be its duty from time to time, as the said obligations are about to become due and payable, to impose upon the taxable property of the county sufficient tax to enable payment to be made, upon the due date thereof, of such obligations, according to the terms and conditions thereof. Said board shall promptly dispose of

Laws 1890, chapter 555.

the bonds issued as aforesaid in public competition, upon due notice to be published in two newspapers published in such county, and in two daily newspapers published in the city of New York, for at least three weeks prior to the sale thereof, for not less than the par value thereof, and shall pay the proceeds thereof to the county treasurer of such county, and the said treasurer shall immediately deposit the same in some trust company in the state of New York, designated by the supreme court as a legal depository, which deposit shall be entered and designated "the county road fund" of such county, and the same shall not be drawn out or used for any other purpose than the improvement and repair of such county roads so designated by the said board of supervisors, and only on the presentation of an account duly verified, audited by the board of supervisors and accompanied by the certificate of the supervising engineer that the work, materials or services have been done, delivered and rendered in accordance with the contract therefor.

§ 4. The said board of supervisors shall, immediately upon receipt of said county road funds, proceed to improve and repair the said county roads designated as aforesaid in the manner and with the material required by the provisions and regulations of this act, and shall, thereafter, in like manner, keep the said roads constantly in good repair and condition. All such improvements and repairs, except in so far as relates to the services of an engineer, shall be made under and in pursuance of written contracts with the lowest bidder, upon bids called for by notice and advertisement similar to that to be given in the case of the sale of the county bonds hereinafter referred to and upon terms and specifications, which, with the provisions of the contracts and the security offered by the contract-

Laws 1890, chapter 555.

ors, shall be approved by the board of supervisors before such contracts shall be finally awarded or executed.

§ 5. All the improvements and repairs made under and in pursuance of this act shall be done under the supervision of a competent civil engineer, holding a diploma as such, to be appointed by the board of supervisors and to be removed by vote of four-fifths of all the members of the board of supervisors. Such engineer shall be consulted in the preparation of the specifications and contracts for such work, shall require such improvements and repairs to be made in conformity with the provisions of this act and of the contracts therefor, shall certify from time to time, to the board of supervisors as to the character and progress of the work being actually done, and do such other professional work as shall be imposed upon him by such board of supervisors, or by the contracts for such improvements or repairs, and shall be paid for his services such reasonable compensation as shall have been previously agreed upon between him and them. The board of supervisors shall cause all county roads to be divided into sections of not more than one mile each to be designated by suitable monuments which shall be numbered, and it shall be the duty of the supervising engineer to make regular quarterly reports to the board of supervisors in writing (and oftener if required by such board), which shall state the then condition of each section of the road, the amount expended thereon for the last quarter, and the repairs necessary for the ensuing quarter, and the estimated cost thereof, and he shall file a duplicate of such quarterly report in the county clerk's office.

§ 6. The following regulations shall govern all improvements and repairs of such county roads, when the same are made under or in pursuance of the provisions of this act:

Laws 1890, chapter 555.

1. All such improvements and repairs shall embrace or cover the road-bed or wagon-way to the width of at least one rod and to the depth of at least eight inches, unless the board of supervisors, by a four-fifth vote of the entire board, shall decide to reduce its width to fourteen feet or its depth to six inches in specific cases, though material similar to that about to be employed, if already upon such road-bed, may be utilized as a part of the material to be employed in forming such improved or repaired road-bed.

2. No material other than stone, wood, shells or asphalt compound shall be used in making such improvement or repairs, for at least one rod or fourteen feet in width as the case may be and the above required depth of such improved or repaired surface.

3. In case any road to be improved or repaired shall already have a sufficient compact and substantial foundation of stone already laid, such foundation may, in the discretion of such engineer and with the approval of said board of supervisors, be allowed to remain and be utilized* as of its actual depth, but no new or fresh material shall be placed thereon until all material previously and in any way superimposed upon such foundation, but of a different character from that about to be newly employed in such improvement or repairs, shall have been thoroughly removed.

4. Whenever any road-bed or wagon-way shall be thus improved or repaired with broken stone, there shall be placed in such said road-bed or wagon-way, if a sufficient substantial and compact foundation of stone does not already exist, a foundation course or layer of trap rock, granite or other equally hard stone, not less than four inches thick, of stone not less than two and one-half inches in diameter, or of the size commonly known as two and

* So in the original.

Laws 1890, chapter 555.

one-half inch stone, and in all cases of improvement with stone other than block pavement, the uppermost layer or covering shall not be less than two inches thick, and shall consist of granite or trap rock dust known as screenings, and, in case of repair, not less than one inch in thickness, and the same shall be applied under the pressure of a roller of not less than two tons weight.

5. All road-beds or wagon-ways thus repaired shall be shaped or crowned with a sufficient and continuous rise of at least one-half inch to the foot from the sides to the center thereof, and shall be so constantly kept and maintained.

§ 7. No horse railway or electric or other railway shall be laid, constructed or operated on said county roads, unless, in addition to the requirements of existing laws, the same shall be authorized by a two-third vote of the board of supervisors and unless the same shall be constructed with a flat or grooved rail, and in case of horse railways, paved between the tracks in the manner prescribed by the board of supervisors in the resolution authorizing the same and the same constantly maintained in good order and condition by said railroad company, and the railroad or corporation constructing the same shall agree thereto, and it shall be the duty of the said board of supervisors to require from said railroad or corporation, or other person, a bond with sufficient sureties as a guarantee, and conditioned for the performance of their agreement, and the board of supervisors may, from time to time, require such bond to be renewed in case the sureties, or any of them, in its judgment, shall become insufficient.

§ 8. Whenever it shall be necessary to lay water or gas mains, or construct sewers or other public improve-

Laws 1890, chapter 555.

ments, or to make connections therewith through or upon said county roads, or any part thereof, which shall require the digging up or interference with the same or the road-beds thereof, in addition to the consent and authority required under existing laws for the same, it shall be necessary to obtain the consent of said supervising engineer thereto. The said road and road-bed shall, in each case, be promptly restored to its former condition, and the same shall be done subject to the approval of the supervising engineer, at the expense of the person, corporation or municipal authority, at whose request such work shall be done, and the amount thereof may be recovered in default of payment, by the board of supervisors; and, before granting his consent, the said supervising engineer shall require a sufficient deposit to be made by the person or corporation applying for such consent, conditioned that the said road or road-bed shall be so restored.

§ 9. Wherever an expenditure exceeding the rate of ten thousand dollars per mile shall be deemed necessary on such county roads, or any part thereof, all such expenditure in excess of ten thousand dollars per mile shall be borne by the town or towns, village or villages, or separate road districts within whose jurisdiction such roads or parts of roads so improved or repaired shall be, and in case of such excess, the board of supervisors shall cause such excess to be levied and collected in the next ensuing tax levy authorized by such supervisors upon such towns, or upon the portions thereof embraced in such villages or separate road districts liable therefor.

§ 10. Said board of supervisors shall have the control and jurisdiction over said county boards only for the purpose of improving and keeping the same in repair, except

Laws 1880, chapter 555.

as hereinbefore mentioned, and for all other purposes the said roads shall remain and be subject to the authority, control and jurisdiction of the town, village, separate road district, or local authorities to which they shall respectively belong; provided, however, that all roads or parts of roads designated as county roads shall remain under the control of the local authorities liable for the repair thereof until such improvement shall have been actually begun thereon under this act, and if the said board of supervisors shall at any time relinquish the control of any county road or part thereof the local authorities within whose jurisdiction the same shall be, shall forthwith resume the control and charge thereof in like manner as if the same had not been designated as a county road.

§ 11. All action taken in violation or disregard of the provisions hereof, or any failure to observe the provisions hereof, shall be deemed unlawful, and any officer or person who shall participate in such action shall be guilty of a misdemeanor, and shall, upon conviction, in addition to the punishment provided by law for a misdemeanor, be adjudged to pay to the treasurer of such county a fine of five hundred dollars.

§ 12. The provisions of this act shall not become compulsory in any county containing a city of over one hundred thousand inhabitants, unless the board of supervisors thereof shall, by a vote of four-fifths of all the members of such board, determine that it will be beneficial to such county that this act shall be compulsory therein.

§ 13. Nothing in any general act, or general or special act for the organization of any village or separate road district in any county, or relating thereto, shall be con-

Laws 1891, chapter 309.

strued to prevent the carrying out of the provisions of this act.

§ 14. This act shall take effect immediately.

LAWS 1891, CHAPTER 309.

AN ACT *to authorize overseers of highways to acquire gravel for highway purposes.*

SECTION 1. The overseers of highways of any road district of the state, with the consent of the commissioners of highways of the town, and the approval of the town board, shall have power to purchase of the owner of any gravel bed or pit within the town, gravel for the purpose of grading, repairing or otherwise improving the highways of the town at a price per cubic yard approved by said commissioners and town board. If such overseer can not agree with any such owner for the purpose of such gravel, the overseer, with the consent of such commissioners and the approval of such town board, shall have power to acquire by condemnation the right to take and use such gravel, provided, no gravel shall be so condemned within one thousand feet of any house or barn, or taken from any lawn, orchard or vineyard, and to remove the same from such bed or pit for the purpose of grading, repairing or otherwise improving such highways, together with the right of way to and from such bed or pit to be used for the purpose of such removal. The right to use such gravel or to take the same from any such bed or pit may be acquired under this section for two or more or all of the road districts of the town, in common; and if acquired for two or more or all of the districts, the commissioners of highways, with the approval of the town board, must make the pur-

Laws 1893, chapter 239.

chase or acquire such right by condemnation. The amount agreed to be paid upon any such purchase, and the amount adjudged to be paid upon any such condemnation shall be paid by the districts in which such gravel shall be used, but the costs and expenses of the proceedings for the condemnation incurred by the overseer, shall be a charge upon the town, and shall be audited by the town board, and paid the same as other town charges.

§ 2. If the town shall abandon for the period of three years any right so acquired to use any gravel bed or pit or to take gravel therefrom, or if the overseer of highways of any such district wherein any such right shall have been so acquired, or the commissioners of highways of the town shall cease to use the same for the purposes for which it was acquired, the right of the town and of such overseer and commissioners thereto shall cease, and the ownership thereof shall revert to and become vested in the owner of such bed or pit at the time such right was acquired, or his heirs or assigns.

§ 3. This act shall take effect immediately.

LAWS 1893, CHAPTER 239.

AN ACT *in relation to the intersections and crossings of the tracks and roadbeds of certain railroads laid in, across or upon the highways, streets, avenues or roads of the cities, towns and villages of the state.*

SECTION 1. Whenever the railroad or route of any street surface railroad corporation shall intersect and cross, or shall cross the tracks and roadbed of any railroad, operated by locomotive, steam or other power, which are laid in,

Laws 1893, chapter 239.

across or upon the surface of any street, avenue, road or highway in any city, town or village of the state, having less than five hundred thousand inhabitants, and such street railroad corporation having been unable to agree with the corporation owning the tracks and roadbed so intersected or to be intersected and crossed, as to the line or lines, grade or grades, points or manner of such intersection and crossing, or upon the compensation to be made therefor, shall have applied to the court by petition to appoint commissioners to determine the same, the court shall upon application made by such street surface railroad corporation, at, or after, the time of the appointment of such commissioners, or if an answer to the petition of such street surface railroad corporation has been interposed, at any time thereafter, direct that such street surface railroad corporation, be permitted to lay its tracks across and to intersect, upon the surface of the street, avenue, road or highway, the tracks and roadbed of such railroad operated by locomotive, steam, or other power, provided, such street surface railroad corporation shall at the time of obtaining such order make and file with the clerk of said court, its bond or undertaking in writing, in an amount and with surety or sureties to be approved by the court, conditioned for the full and faithful performance by such street surface railroad corporation of any and all conditions and requirements which may be imposed by said commissioners and be affirmed by the court, in determining the line or lines, grade or grades, points or manner of such intersection and crossing and as to the amount of compensation to be paid therefor, and also conditioned to conform such crossing and intersection made by virtue of such order of the court to the requirements made by said commissioners as affirmed by the court.

§ 2. No street surface railroad shall be allowed to lay its

Laws 1893, chapter 419.

tracks at grade across the tracks or road bed of any railroad operated by locomotive steam power at any point where there are three or more tracks of the steam road proposed to be crossed, which tracks have been constructed and in operation at least two years, unless the written consent of the state railroad commissioners be first obtained for such crossing at grade. But this section shall not affect the operation of section one of this act in any suit or proceeding now pending nor any renewals of said pending suit or proceeding brought for any cause.

LAWS 1893, CHAPTER 419.

AN ACT to repeal chapter four hundred and ninety-three of the laws of eighteen hundred and ninety-two, entitled "*An act to provide for the construction of highways and bridges upon highways, running through two or more towns in the same county,*" and continuing certain proceedings heretofore commenced under said act and authorizing the issue of bonds to pay certain portion of the costs of said proceedings.

SECTION 1. Chapter four hundred and ninety-three of the laws of eighteen hundred and ninety-two, entitled "*An act to provide for the construction of highways and bridges upon highways running through two or more towns in the same county,*" is hereby repealed, but nothing herein shall affect any proceedings heretofore commenced under said act where, prior to the first day of March, eighteen hundred and ninety-three, and the statement required by section four of said act of the cost of the construction of the bridges was presented to the board of supervisors of any county wherein said proceedings were

Laws 1893, chapter 582.

instituted, and such proceedings shall continue until the completion thereof as in this act provided.

§ 2. The cost of the construction of any bridges provided in said act may be paid by levy upon the taxable property of said county in the taxes levied for any one year, or by the issuing of bonds for the cost and expense thereof as the board of supervisors of any county may determine. Such bonds shall be of such denomination, bear such interest and be payable at such time or times as the board of supervisors may determine.

§ 3. This act shall take effect immediately.

LAWS 1893, CHAPTER 582.

AN ACT *to provide for improvements in streets and highways in towns within counties containing upwards of six hundred thousand inhabitants.*

SECTION 1. In each of the towns of this state within counties containing upwards of six hundred thousand inhabitants, the supervisor of such town is hereby authorized to appoint one citizen and freeholder residing in each school district of the town, who, together with the said supervisor, ex-officio, shall constitute a board to be known as the street improvement commissioners of such town, with authority to take charge of the system of improvements hereinafter provided for.

§ 2. If a portion of the territory of any such town shall have been detached, to form a school district in connection with any territory of an adjoining town, such portion of

Laws 1893, chapter 582.

territory so detached shall, for all the purposes of this act, be considered as forming a part of the school district within such first mentioned town immediately adjoining the same, and from which it shall have been detached as aforesaid.

§ 3. The moneys to be expended under this act shall be divided and apportioned so that the amounts thereof expended in each of the several school districts, as now constituted, shall be as nearly equal as practicable.

§ 4. Each of the commissioners appointed by the supervisor under the provision of the first section shall take the constitutional oath of office and file the same in the office of the town clerk, together with an undertaking to the town in the sum of five thousand dollars, with security to be approved by the board of town auditors, for the faithful performance of his duties.

§ 5. All vacancies in said office resulting from any cause or from any of said commissioners refusing to qualify shall be filled by the supervisor as in the first instance.

§ 6. For the purpose of effecting the improvements aforesaid the said commissioners shall have power:

First. When any streets and avenues shall have been duly opened and graded according to law, to determine those of them to be improved, the order in which said improvements shall be made, the manner in which the work shall be done and the materials to be used.

Second. To enter upon any lands in such towns for the purpose of surveys or for examination, or for such other purpose as is required under this act.

Third. To grade, pave, gutter and curb any such street or avenue opened and graded as aforesaid, or any part

Laws 1893, chapter 582.

thereof, and to make such other improvements in and about the same, and with such materials as they may deem proper.

Fourth. To make all necessary drains and as far as practicable to connect the same with existing drains, water-courses and sewers.

Fifth. To make temporary tramways on or over any street or unoccupied lands in said town, for the carriage of earth or materials, and use thereon such vehicles or motive power as they may deem best adapted to the work, and when private lands are so used, to grant such compensation for such use as to said commissioners may seem just.

Sixth. To make contracts for any part of the work under their charge at such prices and under such terms and conditions as they may deem proper. All contracts for work exceeding five hundred dollars in amount shall be awarded to the lowest responsible bidder, after due advertisement in a Brooklyn daily newspaper for ten consecutive days for proposals for such work, but said commissioners may reject any or all bids if they shall deem it for the public interest so to do. Contractors shall be required to enter into bonds to the town with security satisfactory to said commissioners for the faithful performance of their contracts.

Seventh. To make and enforce such rules, regulations and restrictions as they may deem proper for the guidance or direction of the contractors engaged in the work herein provided for.

Eighth. To do all such other things not herein specified as may be incident to the exercise of the powers and duties of said commissioners contemplated in this act.

§ 7. The commissioners aforesaid are authorized, immediately after their appointment and qualification, to make

Laws 1893, chapter 582.

all necessary surveys, and establish plans for the improvement of the streets and avenues as aforesaid, subject to the system of grades, if any, which shall have been established by law, and to prepare and furnish suitable maps, profiles and specifications, and the details thereof of all the work to be done as may be necessary.

§ 8. For the purpose of paying the expenses incurred in making such improvements the supervisor of such town shall in the year eighteen hundred and ninety-four, and in the two next ensuing years, prepare and issue bonds of the town to be known as street improvement bonds and bearing interest at a rate not to exceed five per centum per annum, but not more than five hundred thousand dollars of said bonds shall be issued; said bonds shall be issued in separate series of one hundred thousand dollars respectively; each of said series of one hundred thousand dollars, shall be made due and payable in fifty successive annual installments the first of which shall become due not less than ten nor more than eleven years from the date of issue, and the supervisor before issuing said bonds or either of them, shall advertise in a Brooklyn daily newspaper five consecutive days for proposals for the same. None of said bonds shall be sold for less than the par value thereof. The moneys arising from the sale of said bonds shall be deposited as realized with the county treasurer, who shall keep a separate account of all moneys received for the purpose of said improvements, to be paid therefrom on the requisition of the aforesaid commissioners from time to time as may be required for the purpose of said improvements.

§ 9. To meet the interest on said bonds, the amounts thereof becoming due in each year shall be levied in and with and as a part of the annual taxes on all the real and

Laws 1893, chapter 582.

personal estate taxable for ordinary town expenses of such town, and shall, in the warrant to the collector, be directed to be paid to the county treasurer for such purpose.

§ 10. To meet the principal of said bonds the assessors, on or before the fifteenth day of July in each year preceding that in which they shall become due, shall divide and apportion the amount of such principal among the several districts of assessment established and determined by the commissioners under the twelfth section, and assess the same in proportion to the cost of the improvements as therein certified. The said assessments shall be placed in an additional column in the assessment-roll, to be headed "improvement tax," and the assessors shall apportion the amount necessary to be raised in each district among the several lots or pieces of land contained therein which in their judgment shall have been benefited, in proportion to the benefit accruing to them by reason thereof. Such amounts so apportioned by the assessors shall be levied on said several lots, pieces or parcels of land respectively, by the board of supervisors, as part of the general tax, and shall be a lien upon and collectible against the same in the like manner and with like effect as the general tax of said town, and shall, in the warrant to the collector, be directed to be paid to the county treasurer for the purpose herein specified. Each of the several annual installments assessed as aforesaid each year, shall be a lien upon the lots or parcels of land affected thereby only from the time the same shall be respectively levied.

§ 11. In case any commissioners shall be appointed by law for the grading of any of the streets and avenues in such town they shall be authorized to proceed with such grading only according to such plan and to such extent as

Laws 1893, chapter 582.

shall first be approved by the said street improvement commissioners in writing.

§ 12. The powers and duties of said commissioners appointed under the first section shall not continue for more than three years and six months after the passage of this act; and upon the final completion of said improvements as determined by them shall adjust all matters connected herewith, and shall cause all payments thereof to be made by requisition upon the county treasurer as aforesaid, and shall thereupon render to the board of town auditors an account under oath of all moneys received and expended by them under this act, with all vouchers and receipts taken by them, and shall file in the office of the town clerk a statement of the cost of the improvement of the said streets severally and respectively, including all their expenses under this act to be apportioned by them among said several streets as a part of such cost, and shall establish and determine districts for the assessment of the expenses of said several improvements, and file a certificate thereof, together with all the records, maps and other papers connected with or used in reference to said improvements.

§ 13. Nothing in this act contained shall be construed as affecting the provisions of any act now in force for the laying out, construction and maintenance of any driveway or parkway in this state, nor as interfering with the powers and duties of any board of health, board of sewer or flagging commissioners, nor, except so far as hereinbefore otherwise provided, with the duties of the commissioners who may from time to time be appointed by law for the grading of streets or avenues in any such town, nor shall any of the powers conferred by this act upon said street improvement commissioners be exercised except by the

Laws 1893, chapter 607.

votes of a majority of them, and with the concurrence of the supervisor of the town.

§ 14. This act shall not apply to the towns of Flatbush, Flatlands and Gravesend in Kings county.

§ 15. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 16. This act shall take effect immediately.

LAWS 1893, CHAPTER 607.

AN ACT to provide for the widening of highways.

SECTION 1. When any part of a highway in any town of this state, not in an incorporated village or city, running between two or more villages or cities, has, because of the wearing away by a river or stream or any other natural cause, become narrower than the width required by statute, and is dangerous to the users of such highway, twelve or more resident taxpayers of such town may present a petition to the county court of the county within which such town is situated. The petition shall describe the part of the highway proposed to be widened and state that such highway has become lessened in width by the action of a river or stream or other cause, that it is dangerous to the traveling public, that the widening and improvement of such highway is necessary for the public convenience and welfare, that the highway is an important leading road between two or more cities or villages, that the cost of such widening and improvement would exceed the sum of two thousand five hundred dollars and

Laws 1893, chapter 607.

would be too burdensome on the town or towns otherwise liable therefor. Such petition shall be verified by at least three of the petitioners. On receipt of the petition the county court shall forthwith appoint three commissioners who shall not be named by any person interested in the proceedings and who shall be taxpayers of such county, but who shall not reside in the town or towns in which the highway, proposed to be widened and improved, is situated.

§ 2. The commissioners shall take the constitutional oath of office and appoint a time and place for a meeting to hear all persons interested in the proposed widening of the highway. They shall personally examine the part of the highway proposed to be widened, hear any reasons for or against such widening and ascertain the probable cost of the work. They shall have power to issue subpœnas, administer oaths and examine witnesses; they shall keep the minutes of their proceedings and reduce to writing all oral evidence given before them. They shall make duplicate certificates of their decision, filing one in the town clerk's office of the town in which the said highway is located, and the other, with such minutes and evidence, in the county clerk's office of the county where the highway is located. Such commissioners shall have the same power as to the assessment of damages caused by the widening of such highway as commissioners appointed under article four of the highway law for the discontinuance, altering or laying out of a highway, and as to such assessment the same proceedings may be had for the confirmation, vacating or modifying of such decision, as provided in and by said article four of said highway law. The commissioners shall receive a compensation of five dollars for each day necessarily spent in the performance of their duties under this act, and the amount so paid to

Laws 1893, chapter 607.

the said commissioners shall be a charge upon the town or towns in which the highway, proposed to be widened as aforesaid is located.

§ 3. If a majority of the commissioners shall determine that the proposed widening of the highway is necessary and that the cost thereof would be too burdensome for the town, exceeding in probable cost two thousand five hundred dollars, they shall notify the board of supervisors of the county of such decision. The board of supervisors shall thereupon cause one-half of the amount of the estimated cost to be raised by the county and paid to the commissioners of highways of the town or towns in which that part of the highway proposed to be widened as aforesaid is located, and said commissioners of highways shall apply the sum so received by them towards the payment of the cost of such widening. The balance of the expense shall be raised in the manner provided by law, by the town or towns in which that part of the highway proposed to be widened as aforesaid is located.

§ 4. The said commissioners of highways shall construct such widening of the highway according to plans and specifications adopted by them and approved by the town board of their town. The bills and expenses incurred in such work shall be audited by the town board and paid by the commissioners of highways out of moneys raised for such purpose as provided in the preceding section.

§ 5. In case an action might lie in any court of this state against the commissioners of highways of any town to compel such commissioners to widen a part of a highway, the width of which has become less than that required by statute, or in case an action has been brought against such commissioners to compel them to widen a part of a highway, the width of which has become less

Laws 1893, chapter 655.

than that required by statute, the presentation of a verified petition to the county court as provided for in section one of this act shall prevent the commencing of any such action as aforesaid and cause such an action already commenced to cease, and shall be a bar to a recovery on the part of the plaintiff of a judgment against such commissioners of highways in any such action instituted or prosecuted to judgment after the passage of this act.

§ 6. This act shall take effect immediately.

LAWS 1893, CHAPTER 655.

AN ACT *in relation to the publication and distribution of the Highway Law.*

SECTION 1. The governor shall designate some proper person to prepare and publish on or before July one, eighteen hundred and ninety-three, a compilation of the highway laws of this state, defining the powers and duties of highway officers and resident taxpayers. Such manual shall also contain diagrams and practical suggestions and directions for grading and building roads, maintaining and improving the same, and removing obstructions therefrom; and also practical suggestions in regard to tree culture, and the laying out of lawns along highways. The state engineer and surveyor shall cause to be prepared and furnished such maps, diagrams and other drawings as the governor shall require for such compilation. Such compilation shall not be published until approved by the governor.

§ 2. The person so designated to prepare and publish such compilation shall forward to each town clerk as

Laws 1894, chapter 266.

many copies thereof as are required for distribution by this section. Each town clerk, immediately upon the receipt of such manuals, shall retain one for his office and distribute free of charge one copy to each commissioner of highways and overseer of highways in his town, and the cost thereof, which shall not exceed fifty cents per copy, shall be a town charge, and shall be audited and allowed as other town charges at the next meeting of the town board. Such manuals shall remain the property of the town, and upon the expiration of the term of office of each commissioner and overseer of highways shall be turned over by him to the town clerk, who shall deliver the same to the successors in office of such commissioners and overseers. The cost of such manuals to all other persons shall not exceed seventy-five cents a copy.

§ 3. Each supervisor shall, on or before March fifteen, eighteen hundred and ninety-four, pay to the person designated by the governor to compile such manual the amount due for the books forwarded to him. From the moneys so received, the compiler shall pay the cost of preparing and publishing such compilation.

§ 4. This act shall take effect immediately.

LAWS 1894, CHAPTER 266.

AN ACT to provide for the employment of state prison convicts upon the public highway, and repealing chapter three hundred and twelve of the laws of eighteen hundred and ninety-three.

SECTION 1. The superintendent of state prisons may employ or cause to be employed, not to exceed three hun-

Laws 1894, chapter 266.

dred of the convicts confined in each state prison in the improvement of the public highways, within a radius of thirty miles from such prison and outside of an incorporated city or village.

§ 2. The agent and warden of each prison may make such rules as he may deem necessary for the proper care of such prisoners while so employed, subject to the approval of the superintendent of state prisons.

§ 3. The agent and warden of each prison may designate, subject to the approval of the superintendent of state prisons, the highways and portions thereof upon which such labor shall be employed; and such portions so designated and approved shall be under his control during the time such improvements are in progress, and the state engineer and surveyor shall fix the grade and width of the roadway of such highways and direct the manner in which the work shall be done.

§ 4. The superintendent of state prisons is hereby authorized to purchase any machinery, tools and materials necessary in such employment.

§ 5. Any person interfering with or in any way interrupting the work of any convict employed pursuant to this act, upon the public highways, or any person giving or attempting to give any intoxicating liquors, beer, ale or other spirituous beverage to any state prison convict so employed, shall be guilty of a misdemeanor. Any officer or keeper of any state prison having in charge the convicts employed upon such highways, may arrest without a warrant any person violating any provision of this section.
(Added by chapter 664, Laws 1894.)

§ 6. Chapter three hundred and twelve of the laws of

Laws 1895, chapter 499.

eighteen hundred and ninety-three is hereby repealed.
(*Chapter 664, Laws 1894.*)

§ 7. This act shall take effect immediately. (*Chapter 664, Laws 1894.*)

LAWS 1895, CHAPTER 499.

AN ACT to authorize certain town boards and commissioners of highways to expend a sum of money in addition to that authorized by the highway law, and to incur an indebtedness for the grading, macadamizing and improving of highways in said town.

SECTION 1. The commissioners of highways, and the town board of any town of one thousand or less inhabitants adjoining a city having not less than thirty-five thousand inhabitants, which shall have been authorized by a majority vote of electors in said town by ballot at the last annual election in said town to expend a sum not exceeding twenty thousand dollars, in addition to the sum authorized to be expended by section seven, article one, chapter nineteen of the general laws, known as the highway law, for the purpose of purchasing stone, and quarrying, breaking, crushing and spreading the same upon the highways in said town, and defraying the expenses incidental thereto, are hereby authorized, jointly, to proceed with the said work so authorized by said vote.

§ 2. And the town board of any such town is hereby authorized to pledge the faith and credit of said town to the extent and amount of such bond or bonds, and the sum to bear interest at a rate not to exceed five per cent

Laws 1895, chapter 499.

per annum, to be for such amounts and upon such terms and conditions as may be determined by the said board. Said bonds, when issued, shall be binding on the town, and shall contain a recital that they are issued under the provisions of this act, and said recital shall be conclusive evidence in any court of the validity thereof, and of the regularity of their issue. But the said bonds shall be payable within twenty years from the date of their issuance. Each bond shall be signed by the supervisor of the said town and countersigned by the town clerk, and delivered to the supervisor of the said town, who shall advertise the same for sale at public auction to the highest bidder, after one publication at least in one of the newspapers published in the county seat of the county in which such town is situated, at least two weeks before the date of sale. No such bond shall be sold for less than the par value thereof. All such bonds shall be numbered consecutively, and a record thereof kept of each by the town clerk and supervisor, showing the date, amount and date of maturity of each. All moneys to be derived from the sale of bonds shall be kept in a separate fund by the supervisor, and all orders for the payment of such moneys shall be drawn only by the authority of the town board, signed by the supervisor of the town, and countersigned by the town clerk. Before the supervisor shall advertise any such bond, he shall execute to such town, and file with the town clerk a special bond, with sufficient securities, to be approved as to its form and sufficiency, by a majority of the town board, exclusive of the said supervisor, conditioned for the faithful execution of his duties in reference to the sale of said bonds, and applications of the proceeds under the direction of the said town board. At any time, when in the opinion of a majority of the members of such town board the moneys entrusted to such person as supervisor shall be deemed unsafe, or the

Laws 1895, chapter 499.

surety insufficient, they may require a new and further bond, with like conditions as the first, and in such penalty and with such sureties as they may deem requisite and proper. Should default be made in the giving and filing of the bond as herein provided for, within the time limited herein, or if the supervisor neglect to renew his bond, as last hereinbefore provided for, the town clerk, at the request of the said board, shall cause a written notice to be served upon the person so in default requiring him to furnish such bond, or such renewal, as the case may be, within ten days from the day of service of such notice.

§ 3. The work done on the roads and highways under and by virtue of the provisions of this act shall be awarded to the lowest responsible bidder, who shall furnish security satisfactory to the majority of the town board and highway commissioners of the town. The said highway commissioners and town board of such town are authorized and directed to advertise for any and all work done under the provisions of this act at least once a week for two weeks in a paper published in the county seat of the county in which such town is situated. Said advertisement for such work to be done shall contain a sufficient specification of the character and extent of the work to be done, and the places designated by a special town meeting in said town where the work is to be done.

§ 4. This act shall take effect immediately.

Laws 1895, chapter 611.

LAWS 1895, CHAPTER 611.

AN ACT *in relation to certain highways in towns which have expended three hundred thousand dollars or more for macadamizing purposes.*

SECTION 1. Whenever the commissioners of highways of any town, in which during the past five years there has been expended the sum of three hundred thousand dollars, or more, for the purpose of macadamizing the highways of such town, shall by a majority vote of such commissioners, determine that any portion of any highway or street, not within the limits of an incorporated village, which is the terminus of such street or highway, is unnecessary for highway purposes, the said commissioners may, by an order to be duly entered upon their minutes, order such highway to be discontinued and abandoned for public purposes. Provided, however, that no greater portion of such highway to be discontinued shall be more than five hundred feet of the terminus thereof, nor unless the consent of the owners of the land on both sides of such highway or street for the distance it is proposed to discontinue the same, shall, by written petition to such highway commissioners, request the discontinuance thereof.

§ 2. Immediately upon making and entering the order mentioned in the first section of this act, the said commissioners shall cause a written description of that portion of the street or highway ordered to be discontinued, to be filed and recorded in the office of the town clerk of the town in which the same said street or highway is located, and when the same is duly recorded, the said portion of the said street or highway shall thereupon be and become duly abandoned and discontinued for highway purposes.

Laws 1895, chapter 717.

§ 3. All acts and parts of acts inconsistent with this act, in so far as they are inconsistent, are hereby repealed.

§ 4. This act shall take effect immediately.

LAWS 1895, CHAPTER 717.

AN ACT *to compel highway commissioners to file their contracts in certain cases.*

SECTION 1. Within twenty days after the passage of this act, it shall be the duty of the highway commissioners in each of the several towns of this state which has adopted the money system of taxation for highway purposes to file with the town clerk of the town in which said commissioners reside all contracts made by such commissioners by and on behalf of such towns for the construction, care and maintenance of the public highways located therein.

§ 2. All commissioners of highways in towns wherein the money system of taxation has been adopted for highway purposes shall, within ten days after any such contracts have been made as specified in section one of this act, file the said contracts with the town clerk of the town in which such highways are located.

§ 3. Any person offending against the provisions of this act is hereby declared to be guilty of a misdemeanor.

§ 4. This act shall take effect immediately.

Laws 1896, chapter 309.

LAWS 1896, CHAPTER 309.

AN ACT to amend chapter two hundred and fifty-five of the laws of eighteen hundred and ninety-two, as amended by chapter seventy-nine of the laws of eighteen hundred and ninety-three, entitled "*An act to authorize the several towns of this state to establish lamp or lighting districts outside the limits of any incorporated village or villages therein, and to provide for the lighting of public buildings, streets, avenues, highways and public places in said district,*" relating to districts in more than one town.

SECTION 1. Section one of chapter two hundred and fifty-five of the laws of eighteen hundred and ninety-two, as amended by chapter seventy-nine of the laws of eighteen hundred and ninety-three, is hereby amended to read as follows:

§ 1. It shall be lawful for the town board of any town in this state to contract for the lighting of the streets, avenues, highways, public places and public buildings therein, outside of the corporate limits of any incorporated village in said town, upon such terms and for such time or period not exceeding ten years, as the town board may deem proper or expedient, and for the payment of the expenses thereof may establish one or more lamps or lighting districts therein. It shall be lawful for the town boards of two or more adjoining towns in this state whenever a petition for the establishment of a lamp or lighting district shall cover territory lying in two or more adjoining towns in this state, to contract for the lighting of the streets, avenues, highways, public places and public buildings therein, outside of the corporate limits of any incorporated village in said town upon such terms and for such time, or period not exceeding ten years, as the

Laws 1896, chapter 309.

town boards of two or more adjoining towns in joint session assembled may deem proper or expedient and for the payment of the expenses thereof.

§ 2. Section two of said act as amended is hereby amended to read as follows:

§ 2. No such contract shall be made unless a petition for such lighting signed by not less than twenty-five of the taxable inhabitants of said town, shall be filed with the town clerk of said town. If such district shall lie in two or more adjoining towns, then the petition for such lighting shall be signed by not less than twenty-five of the taxable inhabitants of said towns residing in said district and shall be filed with the town clerk of each of said towns.

§ 3. Section three of said act as amended is hereby amended to read as follows:

§ 3. The town board, or if such district shall lie in two or more adjoining towns, then the town boards of each such town shall cause notice of the same to be published for one week in one or more of the newspapers published in such town or towns, or if no newspaper be published in such town or towns, then by posting said notice in at least six public and conspicuous places in said district of the filing of said petition, and the time and place when the same will be acted upon by said town board, or if such lighting district lies in two or more adjoining towns, then when the same will be acted upon at a joint meeting of the town boards of such towns, to be held in the territory where such district is to be created.

§ 4. Section four of said act as amended is hereby amended to read as follows:

§ 4. The amount of any contract that may be entered into pursuant to the provisions of this act, shall be

Laws 1896, chapter 423.

assessed, levied and collected upon the taxable property in said town or district in the same manner, at the same time, and by the same officers as the town taxes, charges or expenses of said town are now assessed, levied and collected, and the same shall be paid over by the supervisor to the corporation, company, person or persons furnishing or supplying said light. If the town boards of two or more adjoining towns shall, in joint session, establish a lamp or lighting district in two or more adjoining towns, they shall determine the relative proportion of the expense of such lighting which shall be borne by each of said towns, and the amount of such expense shall be assessed and levied on the taxable property in such lighting district in each of said towns, and collected in the same manner and at the same time, and by the same officers as the town taxes or charges or expenses of the town in which said district is located, are now assessed, levied and collected, and such relative expense shall be paid over by the supervisor of each of said towns to the corporation, company, person or persons furnishing or supplying said light.

§ 5. This act shall take effect immediately.

LAWS 1896, CHAPTER 423.

AN ACT *to preserve forever the New York and Albany post road as a state public highway.*

SECTION 1. The old established road along the valley of the Hudson river from the city of New York to the city of Albany, known as the Albany post road, shall be a public highway for the use of the traveling public forever.

§ 2. The said highway shall be kept open and free to all travelers, and shall not be obstructed in any way by any obstacle to free travel.

§ 3. No trustees of any village or corporation of any city upon its route, or board of commissioners of highways of towns, or any other person or board whatever, shall have any power or authority to authorize or license the laying of any railroad track upon said highway, except to cross the same, and any such action shall be void and of no effect.

§ 4. This act shall not apply to any portion of said road within the city of New York, nor shall it apply to the road of the president, directors and company of the Rensselaer and Columbia turnpike, nor to the villages, of Sing Sing or Peekskill, in Westchester county.

§ 5. This act shall take effect immediately.

LAWS 1896, CHAPTER 464.

AN ACT *to provide for payment of damages sustained by reason of discontinuance and closing of highways under chapter six hundred and eleven of the laws of eighteen hundred and ninety-five.*

SECTION 1. Any person or corporation interested as owner or otherwise in any lands and claiming any loss or damage, legal or equitable by reason of the discontinuance, abandonment or closing of any street or highway, not within the limits of an incorporated village, under or pursuant to the provisions of chapter six hundred and eleven

Laws 1897, chapter 269.

of the laws of eighteen hundred and ninety-five or of any act amendatory thereof or supplemental thereto, may, upon ten days' written notice to the highway commissioners of the town in which such lands are situated apply to the supreme court or to the county court of the county within which such lands are situated for the appointment of commissioners to estimate and determine such loss and damage, whereupon the court shall appoint three disinterested commissioners of appraisal to estimate and determine such damage, and the amount of compensation to be paid by said town therefor, who shall make their report thereupon to such court, and which report when finally confirmed shall be final and conclusive in respect thereto and the legality and equity of any and all such claims shall be determined by such commissioners and by the court upon the hearing of their report.

§ 2. Any loss or damage so estimated and determined shall be paid by said town as in case of judgment.

§ 3. This act shall take effect immediately.

LAWS 1897, CHAPTER 269.

AN ACT *to provide for the construction and maintenance of bridges over the waters between cities and towns or incorporated villages in said towns.*

SECTION 1. Whenever the highway commissioners having power in the premises under this act shall decide that the public convenience requires a bridge to be constructed over the stream or waters dividing a city from a town or any incorporated village in said town, the same shall be

Laws 1897, chapter 269.

constructed under and according to the provisions of the highway law for the construction of bridges between towns, being article five of chapter nineteen of the general laws, the common council of the city being the highway commissioners of said city, and the board of village trustees of any incorporated village in the town being the highway commissioners of said village.

§ 2. Any land required for the approaches to said bridges for a distance not exceeding three hundred feet from the bridge, may be bought by the commissioners of highway constructing the bridge, the approaches constructed and the cost thereof included in the cost of the bridge.

§ 3. When an agreement can not be made as to the price to be paid for the land for such approaches, the said land shall be condemned in the manner as provided by chapter ninety-five, laws of eighteen hundred and ninety, with the acts amendatory thereof. The expenses of said condemnation proceedings shall be included in and be a part of the cost of the bridge.

§ 4. In order to pay for the said bridges, the city, or town, shall have the power to issue bonds to be known as bridge bonds of the said city or town as the case may be by the officers thereof and in the manner provided by law for the issue of other bonds of said city or town to an amount necessary to pay its proportion of the cost of said bridges which shall be borne equally by said city and town. The total amount of such bonds to be issued by the city shall not exceed twenty thousand dollars, or by a town, twenty thousand dollars. Said bonds shall not be sold for less than the par value thereof and accrued interest, if any; shall mature and be payable at a time not over thirty years from date; be of such denominations and bear such

Laws 1897, chapter 286.

interest, not exceeding five per centum per annum, as the common council of the city, in case of a city, or the town board, in case of the town, shall determine. The proceeds of the said bonds shall be paid to the proper officer for receiving funds of each municipality, and credited to a fund which shall be known as the bridge fund, and shall only be paid out by warrants, as other funds of said city or town are paid out.

Amended by L. 1898, ch. 591.

§ 5. This act shall apply only to towns from which at least one-quarter of the territory thereof has heretofore been taken for park purposes, and which also adjoin a city containing at the time of the taking of the last federal census a population of one and one-half million.

§ 6. This act shall take effect immediately.

NOTE.—Probably only applies to some town adjoining New York City.

LAWS 1897, CHAPTER 286.

AN ACT *to provide for the widening and improving of highways in towns having a total population of eight thousand or more inhabitants and containing an incorporated village having a total population of not less than eight thousand and not more than fifteen thousand inhabitants.*

SECTION 1. In any town, having a total population of eight thousand or more inhabitants and containing an incorporated village having a total population of not less than eight thousand and not more than fifteen thousand inhabitants, except in the county of Madison, any five

Laws 1897, chapter 286.

or more persons owning lands adjoining or abutting on any highway, which extends within the limits of such town and without the limits of such incorporated village for a distance of at least two and one-half miles, may present to the supreme court, at a special term thereof to be held in the county containing said town, a petition for the appointment of three commissioners for the purpose of widening and improving such highway or a certain specified portion thereof not less than two miles and a half in length, such portion being wholly without the limits of such incorporated village. Such petition shall describe the part of the highway proposed to be widened and improved by stating its location and the length and limits of the portion thereof proposed to be widened and improved, and shall state the width of the proposed widening and the character of the proposed improvement, and shall also state and give the exterior lines of said portion of said highways as proposed to be made by such widening, and shall have annexed thereto a diagram or map showing such proposed exterior lines. Such petition shall be signed by all of the petitioners and verified by at least three of them. Notice of the presentation of such petition to such court shall be given by the petitioners by publishing such notice in two newspapers published in such town, if there be such newspapers published therein, and if not in two newspapers published in such county, once in each week for two weeks successively preceding the day of such presentation. Such notice shall be signed by at least three of said petitioners and shall set forth the time and place when such presentation will be made and that the same will be made pursuant to this act. Upon such presentation such court shall, after hearing any person interested or claiming to be interested in any land within such town, who may appear, appoint three disinterested persons, who shall not reside or be freeholders within

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such town, as commissioners. And in case any of such commissioners shall at any time decline to serve or die or for any cause become disqualiafied or disabled from serving as such, the said court, at a similar special term, may upon similar notice and application and hearing, appoint another or other persons similarly qualified to fill the vacancy or vacancies and to act in their place and stead.

§ 2. The said commissioners shall take the oath of office prescribed by the constitution of this state, which oath shall be filed in the office of the town clerk of said town, and a copy thereof, certified by such clerk, in the office of the county clerk of such county. The commissioners shall then proceed with all reasonable diligence to examine such highway and the portion thereof proposed by said petition to be widened and improved and the lands adjoining or abutting on such portion, and may enter upon said lands for such purpose. After having made such examination they shall appoint a time and place within said town for a meeting to hear all persons interested in such widening and improving. They shall cause notice of such meeting to be given by publishing a notice, stating the time and place of such meeting, in at least two newspapers published in said town, if such there be, and if not, in two newspapers published in said county once in each week for two weeks successively next preceding the day of such meeting. At such meeting they shall hear the proofs and allegations of any party interested or claiming to be interested who may appear; and they shall have power to adjourn such meeting from time to time for such purpose. The said commissioners shall thereafter and with all reasonable diligence determine whether or not such proposed widening and improving shall be made. They shall make and sign duplicate certificates of their decision and file one of such certificates in the town clerk's office of said

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town and the other in the county clerk's office of such county.

§ 3. If the said decision of such commissioners shall be against the making of such widening and improvement, their duties under this act shall cease and they shall be entitled to receive from and be paid by such town for their services at the rate of five dollars a day not to exceed one hundred dollars; but if such decision shall be in favor of the making of said widening and improvement, then the said commissioners shall continue in the discharge of their duties as hereinafter provided.

§ 4. The said commissioners shall prepare a map showing the present lines and boundaries of said portion of such highway before being widened and also the lines and boundaries of such portion as to be widened, and also designating the several lots, pieces or parcels of land necessary to be taken for such widening and for such purposes may enter upon such lands. They shall sign said map and file the same in the office of the town clerk of such town.

§ 5. Said commissioners shall then cause a notice to be published, in two such newspapers as aforesaid once in each week or two weeks successively next preceding the day of the meeting mentioned in such notice, that at a stated time and place within said town they will meet for the purpose of hearing any and all parties interested or claiming to be interested in the amount of damages to be awarded for the lands to be taken for such widening. Said notice shall also state the fact that said map has been filed as aforesaid. At the time and place of said meeting and at any adjournment thereof, which said commissioners may publicly make, they shall hear the proofs and

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allegations of any and all parties interested or claiming to be interested in the amount of said damages. The said commissioners shall therefore make and sign a report in writing, in which they shall assess, allow and state the amount of damages to be sustained by the owners of the several lots, pieces and parcels of land to be taken for said widening. Such report shall contain the names of such owners; except that in case the commissioners are unable after due diligence to ascertain the name or names of the owner or owners of any parcel of land to be taken for said widening as aforesaid, they may, in place of the name of such undiscovered parties, insert the words "unknown owner" in their said report. The said commissioners shall then file their said report in the office of the town clerk of said town. After said report shall have been completed and filed as aforesaid, the commissioners shall cause a notice to be published in two such newspapers as aforesaid once in each week for two weeks successively that their said report has been completed and filed and that they will meet at a time or place in said town therein specified, not less than ten days from the first publication of said notice, to review their report, and that at said time and place any person interested or claiming to be interested, may offer objections in writing to such report and accompany the same with such affidavits as he may think proper. The commissioners at such meeting shall hear the proofs and allegations of any party interested or claiming to be interested, who may appear, and they shall have power to adjourn such meeting from time to time for such purpose. The commissioners shall thereupon review their said report and correct the same, where they shall deem proper, and shall thereafter refile the same with the said town clerk; and the commissioners shall thereupon, after publishing a notice in like manner as that provided in the first section hereof for the publication of the notice therein

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provided for, apply to the supreme court, at a special term thereof to be held in such county, to have the said report confirmed. Upon the hearing of such application for confirmation such court shall hear in opposition only the objections in writing and the accompanying affidavits, which have been presented to the commissioners as above provided. If no sufficient reason to the contrary shall appear, the court shall affirm the said report. Otherwise it may refer the same back to the said commissioners for revision or correction; and after such revision or correction the same proceedings shall be taken as are hereinbefore provided for at and after the first meeting of the commissioners for the revision or correction of such report. The commissioners shall thereupon, in the same manner as hereinbefore provided for, make renewed application for the confirmation of such report and the court shall thereupon affirm or refer back the said report; and such proceedings shall be repeated until a report shall be presented, which shall be confirmed by the said court.

§ 6. Within six months after the report of said commissioners shall be refiled and confirmed as aforesaid, the supervisor of such town shall out of the proceeds of the bonds hereinafter mentioned, pay to the several and respective persons named in such report respectively the amounts awarded to them for damages as aforesaid with six per centum interest thereon from the day of the confirmation of said report, which amounts with such interest are hereby made and declared to be charges upon said town; except in cases where the persons named in such report shall be liable to be assessed for the improvements herein, in which cases the amount of the assessment hereinafter provided for shall be first deducted and the balance only (if any) paid to the owners. And in case there are any unknown owners named in said report, the said super-

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visor shall deposit the amounts awarded to them with like interest in some trust company in such manner as the said court shall in the order of confirmation direct, such amounts to be paid out upon the application of said unknown owners when discovered. From the date of the confirmation of such report by the order of the said court the title of all the lands therein designated to be taken for the said widening shall vest in such town for the purposes of a highway forever.

§ 7. After the confirmation of the said report the supervisor of the said town shall from time to time, upon the written requisition of the said commissioners, for the purpose of paying the said land damages and the expenses of the said improvement, make, execute and issue in due form the bonds of the said town for not to exceed the aggregate sum of seventy-five thousand dollars principal, in denominations of one thousand dollars each. The faith and credit of the said town is hereby pledged for the payment of the said bonds, principal and interest. The said bonds shall bear interest at not to exceed five per centum per annum, such interest to be payable semi-annually. They shall become due and payable, the first two thousand dollars thereof at the expiration of ten years from the day of their issue and two thousand dollars thereof in each and every year after said ten years, until all of the same shall have become due and payable. Each of said bonds shall contain a recital that it is issued under the provisions of this act; and such recital shall be conclusive evidence in any court of the validity of such bond and of the regularity of its issue. Each such bond shall be signed by the supervisor of such town and countersigned by the town clerk thereof. All of such bonds shall be numbered consecutively and a record thereof shall be kept by such town clerk showing the number, date, amount and date of maturity of each.

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The said bonds shall be sold by the supervisor for not less than their par value and accrued interest, if any. All moneys derived from the sale of said bonds shall be kept in a separate fund by the said supervisor and shall be paid out by him only upon orders signed by the said commissioners and shall be applied only to meet and defray disbursements under this act, except that the said supervisor shall, without any order signed by said commissioners, out of the said funds, pay to the parties entitled thereto or to such trust company as above provided the amounts awarded in such report as confirmed for damages for lands taken or to be taken; and the said supervisor shall be entitled to receive one per centum, and all necessary expenses or disbursements, on all moneys disbursed by him thereunder.

§ 8. In case the town board of said town shall deem it necessary or proper so to do, they may make an order to be entered on their minutes, designating one or more good and solvent banks, bankers or banking associations in said county for the deposit of all moneys received by the supervisors upon the sale of said bonds; and said commissioners shall have power and authority to agree with any such bank, banker or banking association so designated, upon a rate of interest per annum to be paid on the money when deposited; and the accrued interest thereon as often as once in six months be credited by such depository or depositories to the account of such funds; and it shall be the duty of said supervisor, upon the making of such order of said board, to forthwith deposit all sums of money received by him from the sale of such bonds with such depository or depositories so selected by said board; and thereupon said supervisor shall be relieved and released from all liabilities occasioned from any loss of said money while upon deposit with such depository or depositories, but

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nothing herein contained shall be held to relieve said supervisor of responsibility for the loss of any such moneys, while they are in his hands.

§ 9. The said commissioners, after the completion of said report, shall make and sign the necessary plans and specifications for the work and materials necessary for making said widening and improvement, and shall file the same in the office of said town clerk. They shall then publish, in the manner provided in section one hereof for the publication of the notice therein provided for, a notice, that they will receive at a time and place therein designated, sealed proposals for such work and materials. All bids or proposals received in response to said advertisements shall be publicly opened at such meeting of said commissioners; and they shall award each contract for which bids and proposals have been so advertised for, as aforesaid, to the lowest bidder therefor; or they may reject any or all bids, and readvertise as often as they may deem it to be best so to do, and shall continue to do so until bids acceptable to said commissioners shall have been received. Said contract or contracts when awarded, shall be executed by the supervisor of such town under the direction of the aforesaid commissioners in behalf of said town. All contracts when awarded shall be executed in writing and in duplicate by the contractor or contractors on the one part, and said supervisor and commissioners acting for such town on the other part. One of said original contracts shall be delivered to the said contractor or contractors and the other shall be filed in the town clerk's office of said town. The work and materials called for by said contractor or contractors shall be done and furnished under the direction and supervision, and subject to the inspection of said commissioners; and in no event shall such town be held in any action brought or had under any contract

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so made to any other or greater liability than that expressed therein, nor required to pay out or otherwise dispose of any sum of money for the doing of such work or the furnishing of such materials greater than is stipulated in such contract, nor otherwise than in strict conformity with the stipulations thereof. In case any work shall be abandoned by any contractor, or his contract terminated pursuant to the provisions thereof, it shall be readvertised and relet in the manner in this act provided for the original letting of said work. No extra work or materials shall be done or furnished or allowed for unless the same is allowed by said commissioners or a majority of them in writing before the same is done. Each bidder to whom a contract or contracts is awarded as hereinbefore provided, shall give a bond to said town with two or more sureties for the faithful performance of his contract in such sum as shall be prescribed by said commissioners; and the said town may bring and maintain action upon any such bond.

§ 10. No surface railway shall be constructed on any said highway so widened, except within eleven feet on each side of the center line of said highway, and no such railway shall be operated by horse or horses. A distance of not less than twenty feet on each side of such twenty-two feet so reserved for railroad purposes shall be improved for highway purposes and not less than sixteen feet of said twenty feet shall be of macadam. Sidewalks shall be graded on each side of said highway to a width of not less than fifteen feet each.

§ 11. The said commissioners may employ counsel and an engineer and other assistants to advise and assist them in the discharge of their duties under this act. The com-

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pensation of such counsel, engineer and assistants shall be audited and fixed by the commissioners and shall be a charge upon the said town and shall be paid by the supervisor of such town out of the proceeds of said bonds, upon the order or orders of said commissioners, except that in case the decision of said commissioners, provided for in sections two and three of this act, be against the widening and improving of such highway, then the compensation of such counsel, engineer and assistants shall be paid by the said town in the same manner in which ordinary charges against said town are paid, except that the audit thereof by the said commissioners shall in all respects be final and conclusive. In case such decision be in favor of said widening and improving, then the fees of the said commissioners shall be the rate of five dollars a day to each for his services, not exceeding however in the aggregate the sum of five hundred dollars to each, and shall be audited by the supervisor of said town and paid by him out of the proceeds of said bonds, without any order of said commissioners.

§ 12. When the said commissioners shall determine that the said work of widening and improving said highway has been completed, they shall file in the office of the town clerk of such town their certificate stating such conclusion and the entire cost of the making of said widening and improvement. The assessors of such town shall thereafter proceed to assess upon and against the several lots, pieces and parcels of land situated within the district of assessment hereinafter provided, one-half of said entire cost, as stated in said certificate, in proportion to the benefits, which such lots, pieces and parcels of land in the judgment of said assessors have received and will receive respectively from such widening and improving. The said district shall include all the several lots, pieces and par-

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cels situated within the limit of the said town and outside of the limits of said village. Of any lot, piece or parcel of land being within said town and partly within and partly without said village, the portion being without said village shall be deemed a separate lot, piece or parcel and shall be included in such district. The said assessors of said town shall make a list of all the several lots, pieces or parcels of land included in said district of assessment and file the same in the office of the town clerk of such town. They shall thereupon give public notice of the time and place of a meeting to be held by them, by publishing such notice in the manner provided in the first section hereof for the publication of the notice therein provided for. Such notice shall state that at the time and place therein designated the said assessors will meet and hear any person interested or claiming to be interested in any of said lands. At such meeting they shall hear the proofs and allegations of all parties, having or claiming to have any interest in said lands, who may appear and desire to be heard. The said assessors shall thereafter assess upon and against the said several lots, pieces and parcels of land included in said district of assessment, one-half of said entire cost in proportion to the benefit which in the judgment of the said assessors has accrued or will accrue to said lots, pieces or parcels of land respectively from the widening and improving the said highway. The said assessors shall prepare and sign a list of such assessments which shall state each of said lots, pieces and parcels of land and the amount assessed by them upon and against it separately and also the name of the owner of each of said lots, pieces or parcels of land, where by reasonable diligence they can ascertain it and where they can not ascertain such name then they shall state the name as "unknown owner." The said assessors, after completing such list, shall file the same in the office of

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the town clerk of said town and shall give public notice of a meeting to be held by them at a specified time and place within said town for the purpose of hearing any objections to such list and assessment. Such notice shall be published in the same manner as provided in section one hereof for the publication of the notice therein provided for. At the time and place mentioned in said notice the said assessors shall meet and hear any and all objections, which may be presented to them to the said list and assessment or any part thereof and may publicly adjourn their meeting for such purpose and they shall consider and determine upon said objection; and they may revise said list or amend the same and shall correct any error therein and after having made any corrections, that in their judgment may be proper, they shall confirm the said list and assessment as thus corrected and refile the same in the office of said town clerk; and such clerk shall indorse upon said list the date and minute of said refiling and from that moment the assessments made by said list shall become and be liens upon and against the several lots, pieces and parcels of land respectively mentioned therein. The said assessments shall become due and payable in ten equal annual installments; the first of such installments on the first day of March next following the refiling of said list, and one of the others on the first day of March in each and every year thereafter until all the same shall become due. And each of said installments shall bear interest at the rate of six per centum from the date of the refiling of such list as aforesaid. The supervisor of said town shall forthwith after each of said installments becomes due, provided same is still unpaid, issue a warrant under his hand and seal as such supervisor to the receiver or collector of taxes of said town for the collection of such installment with interest as aforesaid, which warrant shall be in the form as nearly as

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may be of the warrant issued by the board of supervisors to such tax collector or receiver for the collection of the annual taxes in and of said town; and such proceedings shall be taken upon such warrant and for the collection of such installment with interest and for the sale of such lands for the non-payment thereof as are taken under such warrants issued by the board of supervisors of such county for the collection of the annual taxes of such town and as are taken for the sale of lands in said town for the non-payment of such taxes. But the owner of any such lands may at any time pay the entire amount of such assessment against them unpaid, with interest to the date of payment. All money received or collected upon or for said assessments shall be paid to the supervisor of said town and shall by the vote of the town board thereof of said town be applicable to the payment of any charge against such town.

§ 13. The amount of said bonds becoming due in any one year and of the interest accruing thereon in any one year shall be a charge upon and against said town and shall be levied and assessed and collected upon and against the taxable property in said town in the same manner as other town charges are by law to be levied, assessed and collected.

§ 14. This act shall take effect immediately.

(This act held unconstitutional, as being in violation of § 18, article 3, of the Constitution. *Matter of Henneberger*, 25 App. Div. 164.)

Laws 1897, chapter 481.

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SECTION 21. There shall be elected at the town meeting in each town, in the spring of eighteen hundred and ninety-eight, one supervisor, one town clerk, one highway commissioner, one assessor, one collector, one or two overseers of the poor, not more than five constables and two inspectors of election for each election district, all of whom shall hold office for a term of one year. At the town meeting to be held in the spring of eighteen hundred and ninety-nine, all of such officers shall be elected in the manner and for the terms prescribed in this act. There shall be elected at the town meeting to be held in the spring of eighteen hundred and ninety-eight, one justice of the peace for a term of four years, beginning on the first day of January, eighteen hundred and ninety-nine. At the town meeting to be held in the spring of eighteen hundred and ninety-nine, there shall be elected two justices of the peace for a term of four years, beginning on the first day of January, nineteen hundred; and at the biennial town meetings thereafter held there shall be elected two justices of the peace for a like term, beginning on the succeeding first day of January. At the town meeting to be held in the spring of eighteen hundred and ninety-nine, there shall be elected three assessors, two for a full term of two years and one for a term of one year, beginning at the expiration of the term of office of the assessor, whose term will expire in the spring of nineteen hundred. At every biennial town meeting thereafter held, three assessors shall be elected for a term of two years. If in any town there are three commissioners of highways, there shall be elected at the town meeting to be held in the spring of eighteen hundred and ninety-nine, three commissioners of highways, two for a term of two years and one for a term of one year, beginning at the expiration of

Laws 1897, chapter 481.

the term of office of the commissioner whose term will expire in the spring of nineteen hundred. At every biennial town meeting thereafter held in any such town, three commissioners of highways shall be elected for a term of two years. The provisions of this act shall not affect or abridge the term of office of any town officer elected prior to the passage of this act.

In those towns where boards of town auditors have been established by law and are in existence at the time of holding of the annual town meeting in the spring of eighteen hundred and ninety-eight, the person elected to the office of town auditor, at the said annual town meeting in the spring of eighteen hundred and ninety-eight, whether so elected before or after the passage of this act shall hold office for the term of one year beginning at the expiration of the term of office of the auditor whose term of office will expire in the spring of eighteen hundred and ninety-eight. At the biennial town meeting held in the spring of eighteen hundred and ninety-nine, in those towns where board of town auditors have been so established there shall be elected three town auditors, two for a full term of two years and one for a term of one year beginning at the expiration of the term of office of the auditor whose term of office will expire in the spring of nineteen hundred. At every biennial town meeting thereafter held in those towns where boards of town auditors have been established, as provided by law, three town auditors shall be elected, for a term two years. (*Amended by L. 1898, ch. 474.*)

Part of an act to amend the Town Law.

Laws 1897, chapter 483.

LAWS 1897, CHAPTER 483.

AN ACT entitled an act to amend chapter five hundred and thirty-three of the laws of eighteen hundred and eighty, entitled "*An act to regulate the passage of lumber, logs and other timber, upon the rivers of this state, recognized by law or common use as public highways, for the purpose of floating or running lumber, logs and other timber, over or upon the same to market or places of manufacture,*" as amended by chapters sixteen and seventy-four of the laws of eighteen hundred and eighty-one, as amended by chapter three hundred and eighty-five of the laws of eighteen hundred and ninety-one, as amended by chapter six hundred and eighty-three of the laws of eighteen hundred and ninety-six.

SECTION 1. Section three of chapter five hundred and thirty-three of the laws of eighteen hundred and eighty, is hereby amended to read as follows:

§ 3. Persons desirous of floating or running lumber, logs or other timber down the rivers mentioned in the first section of this act may construct a chute or apron in connection with any dam across said rivers, and may reconstruct any booms or other works already constructed in, over or across said rivers in such manner as to allow lumber, logs or other timber to pass by the same, and may remove obstructions in said rivers and construct such other piers, booms or other works as may be necessary for the passage of lumber, logs or other timber over and through the channels of said rivers, doing no injury or damage to the owner or occupant of such boom, dam or other works, or to the owner or occupant of any land on which such piers, booms, dams or other works may be constructed, or lands flooded thereby, and pay to such owner

Laws 1897, chapter 596.

or occupant such damages as he or they may sustain by reason of the construction of such piers, booms or other works, or the flooding of lands thereby, and paying also all damages and loss that may be occasioned or done to any and all property, public or private, in or upon said river or its banks, by reason of the floating of logs or lumber, or by reason of the removal of obstructions in the floatable channel of said river, and in case the amount of such damage cannot be amicably arranged by the parties interested, the same shall be appraised by three commissioners, to be appointed by the supreme court of the judicial district wherein the property is situated, on the application of any person interested in the appraisal of such damage, on three days notice, in writing, to the opposite parties of the time and place of making such application. Such booms and other works which shall be so constructed as aforesaid, and the owners and occupants thereof shall hereafter be subject to the provisions of section two of this act. This act shall apply to all statutes of this state declaring streams and rivers public highways for the floating of logs, unless otherwise provided, and shall be deemed to be supplemental thereto, so far as there is or may be any failure in any of such acts to provide for full and complete compensation to the riparian owner or those having vested rights upon such streams or river for any and all damages occasioned by making such streams or rivers public highways for the purpose of floating logs, the intent of this statute being to provide compensation to the riparian owner in all cases where rivers and streams have been declared to be public highways for the purpose of floating logs where no compensation has been provided therein to the riparian owners, and to those having vested rights upon said streams and rivers.

§ 2. This act shall take effect immediately.

Laws 1897, chapter 596.

LAWS 1897, CHAPTER 596.

AN ACT to authorize the acquisition of turnpikes and plank-roads by counties adjoining cities of more than eight hundred thousand and less than fifteen hundred thousand inhabitants, and by villages in such counties.

SECTION 1. If in any county adjoining a city having at any time by the last preceding state or federal enumeration a population of more than eight hundred thousand and less than fifteen hundred thousand inhabitants, a turnpike or plank-road shall have been laid out, maintained or operated by an incorporated turnpike or plank-road company from any point in such county to or into any such city, and a street surface railroad corporation shall have acquired or succeeded to the rights or to any of the rights of such turnpike or plank-road company, then and in such case the board of supervisors of such county, in the name and in behalf of such county, is authorized to acquire by purchase or condemnation so much of such turnpike or plank-road as shall be situated in such county, for the purpose of laying out, maintaining, improving and repairing such portion of such turnpike or plank-road as a public highway and as a county road, subject to the retention of the fee thereof by such turnpike, plank-road or street surface railroad corporation, and subject also to all then existing rights, franchises and privileges of any such turnpike, plank-road or street surface railroad corporation to construct, maintain and operate a street surface railroad upon and along such portion of such turnpike or plank-road substantially as then located, with such switches, crossovers, sidings and turnouts as may from time to time be necessary to the reasonable and convenient operation of such railroad except as may be otherwise agreed between such board of supervisors and any such

Laws 1897, chapter 596.

corporation. And such board of supervisors in the name and in behalf of such county may make further agreements as to the terms and conditions upon which such street surface railroad shall thereafter be operated by any such corporation; and the acquisition by any such county by condemnation of any right, title or interest in and to such turnpike or plank-road shall be subject to such agreements, if any be so made.

§ 2. The board of supervisors of any such county may thereafter adopt and incorporate into the county road system of the said county and improve the roadbed and sidewalks or any portion thereof of such turnpike or plank-road although the same or any part thereof be within the corporate limits of one or more incorporated villages, and for that purpose may issue the bonds of the said county for the payment of the expenses of the acquisition, repair and improvement of the said road in the same manner as now provided by the general law in relation to county roads, and shall apportion the expense thereof among the several towns and city or cities of said county, or charge the same wholly to one or more of said towns as to said board may seem equitable and just.

§ 3. If the board of supervisors of any such county shall by resolution determine not to acquire such portion of any such turnpike or plank-road as shall be located in any incorporated village in such county, or shall not within six months from the passage of this act acquire, by purchase, such portion of such turnpike or plank-road as shall be situated in any such village, or shall not within such six months commence proceedings to acquire such portion thereof by condemnation, then the board of trustees of any such incorporated village is authorized in the name and in behalf of such village to acquire by purchase or

Laws 1897, chapter 596.

condemnation for the purpose of a public highway the same right, title and interest in and to such portion of such turnpike or plank-road as may be situated in such village, and to make the same agreements relating to such portion thereof as by the first section of this act the board of supervisors of such county is authorized to acquire and make as to such portion of such turnpike or plank-road as is situated in the county. In case of such acquisition by any such village, the expense and cost of acquiring, maintaining and improving such portion of any such turnpike or plank-road as shall be so acquired shall be borne entirely by the village acquiring, maintaining and improving the same, and such village may issue its bonds to pay for the expense and cost thereof.

§ 4. This act shall take effect immediately.

Laws 1898, chapter 45.

LAWS 1898, CHAPTER 45.

AN ACT to authorize the construction and maintenance of bicycle paths or wheelways within the limits of the highways in Cattaraugus county.

SECTION 1. Any individual or individuals, corporation, association or bicycle club, residing or having an office in Cattaraugus county, is hereby authorized and empowered, with the consent of the commissioner of highways of the town, or in villages, the board of trustees thereof, to construct bicycle paths or wheelways, not over six feet in width, within the limits of any or all of the highways, outside of the main traveled portion thereof, in any or all of the towns and villages of Cattaraugus county, and thereafter to use and maintain the same.

§ 2. All bridges, sluiceways, culverts, trestles, crossings and the path or wheelway itself shall be so constructed as to not interfere with that portion of the highway in use by teams and vehicles, except by the consent of the commissioner of highways of the respective towns or the trustees of a village in which the said path or wheelway is being constructed.

§ 3. Any and all crossings of the highway shall be constructed at grade therewith, and at all places where ingress and egress is had, to and from the adjacent property, suitable crossings shall be constructed and maintained. The said paths or wheelways shall be constructed as nearly on a grade with the highways as the grade and condition of the lands on the sides thereof will permit, without making unnecessary cuts and fills.

§ 4. All portions of any said paths or wheelways which have already been constructed or which may hereafter be

Laws 1898, chapter 45.

constructed, may be used for bicycle and tricycle riding, and by pedestrians, and shall not be used for any other purpose or purposes.

§ 5. The placing or causing to be placed upon any part of said paths or wheelways, of any iron, glass, earthenware or any other substance or substances injurious to bicycle tires or liable to be injurious thereto, and the injuring or obstructing of any of the said paths or wheelways in any manner, and the leading, riding or driving of any horse or horses or any other animal or animals on any of the said paths or wheelways, and the drawing or placing of any wagon, buggy, cart, sleigh, cutter or any other conveyance on any portion of any said paths or wheelways, and the wilful leading, driving or allowing of any animal to walk or run upon any of the said paths or wheelways, is hereby prohibited.

§ 6. Nothing in this act shall be construed to prohibit the lawful crossing of the said paths or wheelways with any animal or animals or with any conveyance or conveyances.

§ 7. Any person who shall do or commit any of the acts hereinbefore prohibited shall be guilty of a misdemeanor.

§ 8. This act shall take effect immediately.

Laws 1898, chapter 71.

LAWS 1898, CHAPTER 71.

AN ACT to authorize the board of supervisors of Monroe county to appoint a board of sidepath commissioners, and to provide revenue for the repair and construction of sidepaths for bicycles.

SECTION 1. The board of supervisors of Monroe county is hereby authorized to appoint from the resident citizens of such county five persons, at least three of whom shall be residents of the city of Rochester, who shall constitute a board of sidepath commissioners for such county, who shall serve without compensation, except their actual and necessary disbursements in the performance of their duties and whose terms of office shall be designated respectively at one, two, three, four and five years. Thereafter, as the term of office of each commissioner expires, or whenever a vacancy shall occur in such board, the board of supervisors shall appoint a successor thereto for a full term of five years. The county judge of said county may appoint five persons to act as such commissioners until the board of supervisors shall make such appointments.

§ 2. Such board of sidepath commissioners shall, upon entering upon its duties, and in each calendar year thereafter, determine upon a form of license, to consist of a suitable inscription or device to be affixed or attached to a bicycle, and shall, upon payment of a fee of twenty-five cents, cause the same to be affixed or attached in some prominent place upon each bicycle presented for such purpose. Each such license shall be valid during the calendar year in which it is so attached or affixed to a bicycle, and no longer. The sidepaths now and hereafter constructed in said county are hereby declared to be for the exclusive use of bicycle riders, except that where necessary,

Laws 1898, chapter 71.

the same may be used by pedestrians; but no person residing in such county shall ride a bicycle thereon unless there shall appear upon it a valid license issued as above provided.

§ 3. The license fees collected by the said board of sidepath commissioners shall be deposited on the first day of each month with the county treasurer, by whom it shall be credited to a special fund to be called "the sidepath fund," upon which the board of sidepath commissioners are authorized to draw warrants, but no warrant shall be so drawn in excess of the amount actually on deposit, nor shall any contract or purchase be made exceeding the amount of such fund at the time of making such contract or purchase.

§ 4. The said board of sidepath commissioners shall devote the moneys so collected to the repairing of existing sidepaths in the county of Monroe, to the construction of new sidepaths, with the approval of the commissioner of highways, or other officer performing similar duties, having jurisdiction, and repairing the same, to the maintaining of order upon such sidepaths, and to the enforcement of such necessary rules for the use thereof as may be, from time to time, adopted by such board of sidepath commissioners.

§ 5. Any person riding a bicycle upon any sidepath now existing or hereafter constructed in the county of Monroe in violation of section two shall be guilty of a misdemeanor.

§ 6. The location of the sidepaths heretofore constructed in the county of Monroe is hereby ratified and confirmed, and any person wilfully obstructing, injuring or destroy-

Laws 1898, chapter 102.

ing any portion thereof, or any portion of a sidepath hereafter constructed hereunder shall be guilty of a misdemeanor.

§ 7. This act shall take effect immediately.

LAWS 1898, CHAPTER 102.

AN ACT *in relation to the Newburgh and Cocheton turnpike road.*

SECTION 1. The board of directors of the Newburgh and Cocheton Turnpike Road Company, are hereby authorized to abandon, surrender and discontinue their turnpike, from the westerly line of the city of Newburgh, in the county of Orange, to the bridge over the Wallkill river, in the town of Montgomery, in said county, which surrender shall be by a resolution of said board, certified to and acknowledged by its president and secretary, which resolution shall be filed and recorded in the clerk's office of the county of Orange. Upon the filing and recording of such resolution, the rights of such turnpike company in and to the turnpike so abandoned and discontinued shall revert to and belong to the several towns and villages through which such road shall pass, and it shall be the duty of the several towns and villages acquiring said rights under this act, to immediately lay out and declare the same a free, public highway, and thereafter such road or turnpike shall be maintained and worked in the same manner as the other roads of such town and village are maintained and worked.

§ 2. This act shall take effect immediately.

Laws 1898, chapter 115.

GOOD ROADS LAW.

LAWS 1898, CHAPTER 115.

AN ACT to provide for the improvement of the public highways.

SECTION 1. The board of supervisors in any county of the state may, and upon presentation of a petition as provided in section two hereof, must pass a resolution that public interest demands the improvement of any public highway or section thereof situate within such county, and described in such resolution, but such description shall not include any portion of a highway within the boundaries of any city or incorporated village, and within ten days after the passage of such a resolution shall transmit a certified copy thereof to the state engineer and surveyor.

§ 2. The owners of a majority of the lineal feet fronting on any such public highway or section thereof in any county of the state may present to the board of supervisors of such county a petition setting forth that the petitioners are such owners and that they desire that such highway or section thereof be improved under the provisions of this act.

§ 3. Such state engineer upon receipt of such a resolution shall investigate and determine whether the highway or section thereof sought to be improved is of sufficient public importance to come within the purposes of this act, taking into account the use, location and value of such

Laws 1898, chapter 115.

highway or section thereof for the purposes of common traffic and travel, and after such investigation shall certify his approval or disapproval of such resolution. If he shall disapprove such resolution, he shall certify his reasons therefor to such board of supervisors.

§ 4. If he shall approve such resolution, such state engineer shall cause the highway or section thereof therein described to be mapped out both in outline and profile. He shall indicate how much of such highway or section thereof may be improved by deviation from the existing lines whenever it shall be deemed of advantage to obtain a shorter or more direct road without lessening its usefulness or wherever such deviation is of advantage by reason of lessened gradients. He shall also cause plans and specifications of such highway or section thereof to be thus improved to be made for telford, macadam or gravel roadway or other suitable construction, taking into consideration climate, soil and materials to be had in the vicinity thereof and the extent and nature of the traffic likely to be upon such highway, specifying in his judgment the kind of road a wise economy demands. The improved or permanent roadway of all highways so improved shall not be less than eight feet nor more than sixteen feet in width unless for special reasons to be stated by such state engineer it is required that it shall be of greater width. He shall if requested by the resolution include provision for steel plate or other flat rail construction in double track.

§ 5. Upon the completion of such maps, plans and specifications such state engineer shall cause an estimate to be made of the cost of construction of the same and transmit the same to the board of supervisors from which such resolution proceeded, together with a certified copy of such

Laws 1898, chapter 115.

maps, plans and specifications, and of his certificate of the approval of the highway or section thereof so designated as aforesaid.

§ 6. After the receipt thereof upon a majority vote of such board of supervisors, it may adopt a resolution that such highway or section thereof so approved shall be constructed under the provisions of this act, or of any existing act, and thereupon shall transmit a certified copy of such resolution to such state engineer.

§ 7. In case the boundaries of such proposed highway shall deviate from the existing highway, the board of supervisors must make provision for securing the requisite right of way prior to the actual commencement of the work of improvement.

§ 8. Upon receipt of the certified copy of the resolution provided in section six, such state engineer shall advertise for bids for two successive weeks in a newspaper published at the county seat of such county, and in such other newspaper as shall be deemed of advantage for the construction of such highway or section thereof, according to such plans and specifications, and award such contract to the lowest responsible bidder, except that he may in his discretion award the contract to the board of supervisors of the county or the town board or boards of the town or towns in which such highway lies, and except that no contract shall be awarded at a greater sum than the estimate provided in section five. But if no bid otherwise acceptable be made within such estimate, such state engineer may amend his estimate, certify the same to the board of supervisors, and upon the adoption by it of a resolution as provided in section six based on such amended estimate, proceed anew to obtain

Laws 1898, chapter 115.

bids and award the contract as herein provided. Such engineer may reject any or all bids, and before entering into any contract for such construction, he shall require a bond with sufficient sureties, conditioned that if the proposal shall be accepted the party thereto will perform the work upon the terms proposed and within the time prescribed and in accordance with the plans and specifications; and as a bond of indemnity against any direct or indirect damages that shall be suffered or claimed during the construction of such road and until the same is accepted. The people of the state of New York shall in no case be liable for any damages suffered. Partial payments may be provided for in the contracts and paid in the manner herein provided when certified to by such state engineer to an amount not to exceed seventy-five per centum of the value of the work done; twenty-five per centum of the contract price shall be retained until the entire work has been accepted. Whenever a county engineer has been appointed in the county in which such highway or section thereof is to be constructed, he shall have general charge and supervision of the work under the direction of such state engineer and shall report to him from time to time the progress of the work and such facts in relation thereto as may be required. If there is no county engineer, such state engineer shall have some competent person to superintend and have engineering supervision of the work.

§ 9. One-half of the expense of the construction thereof shall be paid by the state treasurer upon the warrant of the comptroller, issued upon the requisition of such engineer, out of any specific appropriations made to carry out the provisions of this act. And one-half of the expense thereof shall be a county charge in the first instance, and the same shall be paid by the county treasurer of the

Laws 1898, chapter 115.

county in which such highway or section thereof is, upon the requisition of such engineer, but the amount so paid shall be apportioned by the board of supervisors, so that if the same has been built upon a resolution of said board without petition, thirty-five per centum of the cost of construction shall be a general county charge; and fifteen per centum shall be a charge upon the town in which the improved highway or section thereof is located, and if the same has been built upon a resolution of said board after petition as provided in section two, thirty-five per centum shall be a general county charge and fifteen per centum shall be assessed upon and paid by the owners of the lands benefited in the proportion of the benefits accruing to said owners as determined by the town assessors in the next section hereof.

§ 10. The town assessors of any town in which any highway or section thereof has been improved or constructed pursuant to petition as provided in section two of this act, shall have power and it shall be their duty upon receiving notice from the board of supervisors of the county in which said town is located, of the cost of construction or improvement of such highway or section thereof in such town, to assess an amount equal to fifteen per centum of said total cost upon the lands fronting or abutting on such highway or section thereof. Such assessment shall be apportioned according to the benefits accruing to the owners of the lands so located, according to the best judgment of said assessors, and the assessments so made when duly attested by the oaths of such assessors shall be collected in the same manner as the general taxes of such town are collected.

§ 11. The construction and improvement of highways and sections thereof, under the provisions of this act, shall be taken up and carried forward in the order in which

Laws 1898, chapter 115.

they are finally designated, as determined by the date of the receipt in each case of the certified copy of the resolution provided in section six by such engineer as herein-before provided.

§ 12. Upon the completion of such highways or sections thereof, so constructed by such engineer, and his acceptance of the same, and after payment has been made, as herein provided, such engineer shall inform the board of supervisors of such county that the highways or sections thereof designated have been constructed as herein provided, and his duties in regard to the same are finished; and he may serve notice on said board to accept such highway thus constructed, which notice shall be filed in the office of the clerk of said county; and twenty days after the service and filing of said notice, such highway or section thereof shall be deemed accepted by said board of supervisors of such county; and thereafter they shall maintain the same as a county road, and apportion the expense as they may be empowered by law.

§ 13. All persons owning property abutting on such road so improved, or residing thereon, shall thereafter pay all highway taxes assessed against them in money, in the manner now provided by law.

§ 14. Whenever any county has had aid in building any such highway, and it seems advantageous to such state engineer that a section or sections of highway, not exceeding one mile in length, should be constructed under this act to connect these roads together, and would be of great public utility and general convenience, he may serve notice on the board of supervisors of such county, and shall file one in the county clerk's office, designating the highways already constructed and the existing terminal, and the

Laws 1892, chapter 115.

section or sections, in his opinion, necessary to be constructed and his reasons therefor. And it shall be the duty of the board of supervisors to provide for the construction of such connecting highway or section thereof, within one year after the service and filing of such notice under this act.

§ 15. In addition to his other powers and duties, the state engineer and surveyor shall compile statistics relative to the public highways throughout the state, and shall collect all information in regard thereto deemed expedient. He shall investigate and determine upon various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of roads and bridges, and such other information relating thereto as he shall deem appropriate. He may be consulted at all reasonable times by county, city, town or village officers having care and authority over highways and bridges, and shall advise such officers relative to the construction, repair, alteration, or maintenance of the same; and shall furnish such other information and advice as may be requested by persons interested in the construction and maintenance of public highways, and shall, at all times, lend his aid in promoting highway improvement throughout the state. He shall hold in each year at least one public meeting in each county, and shall cause due notice of such meeting to be given. He shall co-operate with all highway officers and shall assist county and town authorities, and when requested by them, furnish them with plans and directions for the improvement of the public highways and bridges.

§ 16. He shall report annually to the legislature concerning all the work performed by him, together with such recommendations upon the subject of highway con-

Laws 1898, chapter 133.

struction and maintenance as to him shall seem appropriate.

§ 17. The commissioners of highways and town board of any town, and the board of supervisors of any county, and all other officers who now have or may hereafter have by law the care and supervision of the public highways and bridges shall, from time to time, upon his written request furnish him with all available information in connection with the building and maintenance of the public highways and bridges in their respective localities.

§ 18. The operation of this act shall not be affected by any special act, but the highways may be improved under this act or such special act wherever the same may now exist.

§ 19. This act shall take effect immediately.

LAWS 1898, CHAPTER 133.

AN ACT *to provide for the employment of convicts on the highways in Clinton county.*

SECTION 1. The superintendent of state prisons is hereby authorized to employ not to exceed two hundred convicts confined in Clinton prison in the improvement of the highways between said Clinton prison and the village of Saranac, in the town of Saranac, in the county of Clinton. The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated for team hire, officers' salaries, tools, equipment and

Laws 1898, chapter 224.

other incidental expenses necessarily required to carry out the provisions of this act. The sum hereby appropriated shall be payable by the treasurer, upon the warrant of the comptroller, to be expended under the direction of the superintendent of state prisons.

§ 2. This act shall take effect immediately.

LAWS 1898, CHAPTER 224.

AN ACT to authorize the supervisors of Albany county to appoint sidepath commissioners with power to regulate the use of bicycles within such county, to license the use of the same, and to expend the funds raised thereby in the construction and maintenance of sidepaths for bicycles.

SECTION 1. The board of supervisors of Albany county shall, at its next meeting after this bill becomes a law, appoint from the resident citizens of such county, seven persons, each of whom shall be a cyclist and the owner of one or more bicycles, four of whom shall be residents of the city of Albany, one a resident of the city of Cohoes, one a resident of the city of Watervliet, and one a resident of one of the towns of said county, who shall constitute a board of sidepath commissioners for such county. Said commissioners shall serve without compensation, except their actual and necessary disbursements in the performance of their duties, bills for the same to be audited by the board of supervisors and paid out of the sidepath fund. The commissioners so chosen shall take office immediately upon filing their written acceptance of the same with the clerk of the board of supervisors, and in case any person

Laws 1898, chapter 224.

so appointed fails to file such acceptance within ten days after his appointment, the board of sidepath commissioners may declare the place vacant by a majority vote, and such vacancy shall be filled as hereinafter provided for. The first board of commissioners shall draw lots to fix their respective terms of office, so that two shall serve for one year, two for two years and three for three years, from the first of January subsequent to their appointment, and thereafter the said board of supervisors shall each year, at their meeting previous to the first of January, appoint for a term of three years, commissioners to take the place of those whose terms are about to expire. The county judge shall appoint seven persons to act as such commissioners until the board of supervisors shall appoint the first board of sidepath commissioners. The board of sidepath commissioners shall have power to fill any vacancy on the board occurring by death, resignation or otherwise, and the person so chosen shall hold office until such time as the board of supervisors shall select a commissioner to fill out the unexpired term. If any member of the board shall fail to attend three consecutive meetings, his place may be declared vacant by a majority vote of the board and the vacancy filled as provided above.

§ 2. Such board of sidepath commissioners is hereby authorized and empowered to construct sidepaths along any public road of said county outside the limits of incorporated cities and villages; provided that no sidepath shall be constructed upon or along any regularly constructed sidewalk or between such sidewalk and the highway except by and with the consent of the owners of the abutting lands. Such paths shall not be less than three feet nor more than six feet wide, without the consent of the abutting owners, and shall be constructed within the outside lines and along and upon either side of such public

Laws 1898, chapter 224.

roads as the board of sidepath commissioners shall determine. The board of sidepath commissioners is also authorized and empowered to lay out, construct and repair sidepaths along the public streets of such county, by and with the consent of the officers having jurisdiction over the same.

§ 3. Such board of sidepath commissioners shall, upon entering upon its duties, and in each calendar year thereafter, determine upon a form of license to consist of a suitable inscription or devise to be affixed or attached to a bicycle, and shall upon payment of a fee, to be determined by such commissioners, of not less than fifty cents nor more than one dollar, cause the same to be affixed or attached in some prominent place upon each bicycle presented for such purpose. Each such license shall be good during the calendar year in which it is so attached or affixed to a bicycle and no longer. The sidepaths now and hereafter constructed in said county are hereby declared to be for the exclusive use of bicycle riders and pedestrians; but bicycle riders shall have the right of way thereon and no resident of Albany county shall ride a bicycle thereon unless there shall appear upon such bicycle a valid license, issued as above provided.

§ 4. The license fees collected by the said board of sidepath commissioners shall be deposited on or before the first day of each month with the county treasurer, by whom they shall be credited to a special fund, to be called "the sidepath fund" upon which the board of sidepath commissioners is authorized to draw warrants, signed by a majority of such board but no warrant shall be so drawn in excess of the amount actually on deposit, nor shall any contract or purchase be made exceeding the amount of such fund at the time of making such contract or pur-

Laws 1898, chapter 224.

chase. All warrants or orders so issued against such fund shall be accompanied by vouchers for the work performed or purchases made, duly audited by a majority of said board of sidepath commissioners, and such warrant or order with the vouchers thereto attached shall be sufficient warrant to the said county treasurer to pay the same.

§ 5. The said board of sidepath commissioners shall devote the moneys so collected to the repairing of existing sidepaths in the county of Albany, to the construction of new sidepaths, and to the maintaining of order upon the same, and the enforcement of such necessary rules for the use thereof as may be from time to time adopted by the said board of sidepath commissioners.

§ 6. Any resident of Albany county riding a bicycle upon any sidepath now existing or hereafter constructed in the county of Albany in violation of section three, shall be guilty of a misdemeanor, and shall upon conviction, be punishable by a fine of five dollars.

§ 7. The location of the sidepaths heretofore constructed in the county of Albany is hereby ratified and confirmed, and any person wilfully obstructing, injuring or destroying any portion thereof, or any portion of a sidepath hereafter constructed, shall be guilty of a misdemeanor.

§ 8. Said board of sidepath commissioners shall be authorized to adopt rules covering the speed, use of lamps and signals by cyclists using the paths in said county. Violation of rules so adopted shall constitute a misdemeanor and shall be punishable by a fine not exceeding five dollars.

Laws 1898, chapter 224.

§ 9. The said board of sidepath commissioners shall have the power to appoint one or more persons in each city, village and town, to be known as sidepath police, who shall serve without compensation except for their actual disbursements, such bills to be audited and paid as provided in section four of this act, and who shall have power to make arrests for the violations of this act, and also for the violations of sections six hundred and fifty-two (relative to sidepaths) and six hundred and fifty-four-a (relative to deposits of certain substances on the public road) of the penal code.

§ 10. All fines imposed and collected for violations of this act shall be paid over to the county treasurer by the officers collecting the same, within fifteen days after the same shall be collected, and shall be deposited by the county treasurer to the credit of the sidepath fund.

§ 11. The said board of sidepath commissioners shall keep a book or books of record, containing the names and addresses of all persons to whom licenses shall be issued under the provisions of this act, and records of all proceedings of said board. Said books shall be open to public inspection during customary business hours.

§ 12. This act shall take effect immediately.

Laws 1898, chapter 277.

LAWS 1898, CHAPTER 277.

AN ACT to authorize the construction and maintenance of bicycle paths or wheelways within the limits of the highways in Columbia county.

SECTION 1. Any individual or individuals, corporation, association or bicycle club, residing or having an office in Columbia county, is hereby authorized and empowered, with the consent of any one of the commissioners of highways of the town, to construct bicycle paths or wheelways, not over eight feet in width, within the limits of any or all the highways, outside of the main traveled portion thereon, in any or all of the towns of Columbia county, and thereafter to use and maintain the same.

§ 2. All bridges, sluiceways, culverts, trestles, crossings and the path or wheelway itself shall be so constructed as to not interfere with that portion of the highway in use by teams and vehicles, except by the consent of the commissioner of highways of the respective towns in which the said path or wheelway is being constructed.

§ 3. Any and all crossings of the highway shall be constructed at grade therewith, and at all places where ingress and egress is had, to and from, the adjacent property, suitable crossings shall be constructed and maintained. The said paths or wheelways shall be constructed as nearly on a grade with the highways as the grade and conditions of the lands on the sides thereof will permit, without making unnecessary cuts and fills.

§ 4. All portions of any said paths or wheelways which have already been constructed or which may hereafter be constructed, may be used for bicycle and tricycle riding and by pedestrians, and shall not be used for any other

Laws 1898, chapter 277.

purpose or purposes. And all portions of any said paths or wheelways which have already been constructed by or for the use of bicyclists, and which are now used as bicycle paths, or wheelways, are hereby legalized, ratified and confirmed, and shall have the same standing in law as paths hereafter constructed under the provisions of this act.

§ 5. The placing or causing to be placed on any part of said paths or wheelways, of any iron, glass, earthenware or any other substance injurious to bicycle tires or liable to be injurious thereto, and the injuring or obstructing of any of the said paths or wheelways in any manner, and the leading, riding, or driving of any horse or horses or any other animal or animals on any of the said paths or wheelways and the drawing or placing of any wagon, buggy, cart, sleigh, cutter or any other conveyance on any portion of any of the said paths or wheelways, and the willful leading, driving or allowing of any animal to walk or run upon any of the said paths or wheelways, is hereby prohibited.

§ 6. Nothing in this act shall be construed to prohibit the lawful crossing of the said paths or wheelways with any animal or animals or with any conveyance or conveyances.

§ 7. Any person who shall (willfully and maliciously) do or commit any of the acts hereinbefore prohibited, shall be guilty of a misdemeanor.

§ 8. This act shall take effect immediately.

F O R M S .

Forms.

FORMS.

No. 1.

Resignation of Highway Commissioners.

*To the Town Clerk (Justices of the Peace) of the Town of.....
in the County of..... N. Y.:*

I hereby tender my resignation of the office of commissioner of highways of said town, for the following reasons:

Dated this....day of....., 18....

.....

NOTICE OF ACCEPTANCE OF RESIGNATION.

COUNTY OF..... }
Town of..... } ss.:

To the Town Clerk of the Town of.....

You are hereby notified, pursuant to section 64 of the town law, that we, the undersigned, justices of the peace of said town, have, for good cause shown, accepted the resignation of....as commissioner of highways of said town.

Dated this....day of....., 18....

.....

.....

.....

Justices of the Peace.

No. 2.**Appointment of Highway Commissioner to Fill Vacancy.**

COUNTY OF..... }
Town of..... } ss.:

WHEREAS, a vacancy has occurred in the office of commissioner of highways of said town, by the resignation (or otherwise) of....; now therefore

Forms.

we, the undersigned, town board of said town, do hereby, pursuant to section 65 of the town law, appoint....to fill the vacancy in said office.

Witness our hands and seals this.....day of....., 18....

.....

.....

.....

Town^s Board.

NOTICE TO PERSON APPOINTED.

COUNTY OF..... }
Town of..... } ss. :

To....Esq. :

You are hereby notified, pursuant to section 65 of the town law, that you have been appointed commissioner of highways of said town of, to fill the vacancy caused by the resignation (or otherwise) ofand you are required to take the oath of office, and file your undertaking within ten days after receiving this notice, as directed by section 51 of the town law.

Dated this.....day of....., 18....

.....

Town Clerk.

No. 3.

Undertaking of Highway Commissioner.

WHEREAS,..... of the town of....., in the county of....., was on the.....day of....., 18.., duly elected commissioner of highways ; now, therefore, we, the said.....principal and.....and..... of the town of....., his sureties, do hereby, pursuant to section 63 of the town law, jointly and severally undertake that the said....will faithfully discharge his duties as such commissioner, and that he will within ten days after the expiration of his term of office, pay over to his successor all moneys remaining in his hands as such commissioner, and render to

Forms.

such successor a true account of all moneys received and paid out by him as such commissioner.

Dated this.....day of....., 18..

.....
.....
.....

STATE OF NEW YORK, }
County of..... } ss. :
Town of.....

On this.....day of....., 18...., before me, the subscriber, personally appeared.....and.....to me personally known to be the same persons mentioned in, and who executed the foregoing undertaking, and severally acknowledged that they executed the same.

.....
Notary Public.

JUSTIFICATION OF SURETIES.

STATE OF NEW YORK, }
ss. :
County of.....

....and...., the sureties mentioned in the foregoing undertaking, being severally duly sworn, each for himself says, that he is a resident and freeholder (or householder) within this State, and is worth.....dollars over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale on execution.

.....
.....

Subscribed and sworn to before me, }
this.....day of....., 18... }

.....
Notary Public.

APPROVAL BY SUPERVISOR.

I hereby approve of the foregoing undertaking, and of the sufficiency of the sureties therein named.

.....
Supervisor of the Town of.....

Forms.

No. 4.**Undertaking of Treasurer of Highway Commissioners.**

(Highway Law, § 2.)

WHEREAS, the commissioners of highways of the town of....., in the county of....., have designated, one of their number, to be treasurer, pursuant to section 2 of the highway law; now, therefore, we, the said....., and....., as his surety (or sureties), do hereby jointly and severally undertake to and with the said town that the said.....will faithfully account and pay over to any officer or person, entitled thereto, any money that may come into his hands as such treasurer.

Dated this.....day of....., 18....

.....
.....

STATE OF NEW YORK, }
County of..... } ss.:

On this.....day of....., 18...., before me personally appeared the above-namedand....., to me personally known to be the same person described in and who executed the foregoing undertaking, and they severally acknowledged that they executed the same.

.....

Notary Public.

STATE OF NEW YORK, }
County of } ss.:

.....and....., above named, being duly and severally sworn, each for himself says that he is a resident of and a householder, or freeholder, within the state, and is worth.....dollars over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under execution.

.....
.....

Subscribed and sworn to before me, }
this.....day of...., 18.... }

.....
Notary Public.

Forms.

APPROVAL BY SUPERVISOR.

I approve of the foregoing undertaking, and of the sufficiency of the sureties therein named.

Dated this.....day of....., 18....

.....
Supervisor of the Town of.....

No. 5.**Division of Town into Highway Districts.**

(*Highway Law, § 4.*)

The undersigned, commissioners of highways of the town of....., in the county of.....hereby divide the highways of said town into districts as follows:

District No. 1 shall comprise (here insert the description thereof, and in like manner of all the other districts).

And we hereby assign to each of said districts the inhabitants and corporations, respectively, residing or located or assessed for highway labor therein and liable to work on highways.

Dated this.....day of....., 18....

.....
.....
.....

Commissioners of Highways.

No. 6.**Appointment of Overseers.**

(*Highway Law, § 4.*)

The undersigned, commissioners of highways of the town of....., in the county of....., do hereby appoint overseers of the highways of said town for the ensuing year, as follows:

District No. 1.—.....

District No. 2.—.....

District No. 3.—.....

Dated this....day of....., 18...

.....
.....
.....

Commissioners of Highways.

Forms.

No. 7.**Notice to Overseers of Appointment.**

(Highway Law, § 4.)

COUNTY OF.....
Town of.....} ss.:

To

Please take notice that you have been appointed by the commissioner of highways, overseer in highway district No... in the town of....., county of, N. Y., for the ensuing year; and you are hereby required to report to the town clerk within sixteen days after receiving this notice, the names of all the taxable inhabitants and corporations in your highway district liable to be assessed for highway labor therein.

Dated this day of....., 18....

.....
Town Clerk.

No. 8.**Consent of Town Board.**

(Highway Law, § 10.)

COUNTY OF.....
Town of.....} ss.:

At a special meeting of the town board of said town, called by the supervisor (or town clerk) thereof, held on this....day of....., 18.., the following preamble and resolution was adopted :

WHEREAS, The highway (or bridge), known as, was destroyed by....., on, 18.., (or has become damaged), and there not being sufficient moneys in the hands of the commissioners of highways to rebuild (or repair) the same; therefore, be it

Resolved, That we do hereby consent that the commissioners of highways of the town of.....cause said highway (or bridge) to be immediately rebuilt (or repaired) according to law.

.....
.....
.....

Town Board.

Forms.

TOWN CLERK'S CERTIFICATE TO TRANSCRIPT.

COUNTY OF..... }
 Town of..... } ss.:

I do hereby certify that I have compared the above transcript of the proceedings of the town board of said town, at a special meeting held on the....day of.....18.., with the original record thereof in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Dated this....day of....., 18..

.....

Town Clerk.

No. 9.

Request to Convene Town Board.

(Highway Law, § 11.)

To the Supervisor (or Town Clerk) of the Town of....., in the County of.....:

The undersigned commissioners of highways of said town, do hereby request that the town board be convened in special session, for the purpose of auditing the bills and expenses incurred in the erection (or repair) of the highway (or bridge) under the consent given by said board on theday of....., 18..

Dated this....day of....., 18..

.....

.....

.....

Commissioners of Highways.

CERTIFICATE OF SUPERVISOR AND TOWN CLERK.

COUNTY..... }
 Town of..... } ss.:

The undersigned, supervisor and town clerk of said town, do hereby certify that at a special session of the town board this day held, for the purpose of auditing and allowing the bills and expenses incurred by the commissioners of highways of said town, under the consent given by said

Forms.

town board, on the....day....., 18...., the following bills and accounts were audited and allowed, with interest:

Date.	In whose favor.	Nature of work done and material furnished.	Amount allowed.

Dated this....day of....., 18....

.....
Supervisor.

.....
Town Clerk.

No. 10.**Accounts for Services and Materials.**

(Highway Law, § 12.)

THE TOWN OF....., TO....., DR.

January, 18.., to.....(days' labor on)..... \$

January, 18.., to.....(feet of plank)

Total \$

COUNTY OF..... }
Town of..... } ss.:

....., being duly sworn, says he is the claimant in the above account, and that the items of said account are correct, and that the disbursements and services charged therein have been in fact made or rendered, and goods supplied, and that no part of the same has been satisfied.

Subscribed and sworn to before me, }
this.....day of....., 18.. }

.....
Notary Public.

Forms.

COUNTY OF..... }
Town of..... } ss.:

The undersigned, commissioners of highways of said town, do hereby certify that in the foregoing account of, the services mentioned were actually performed, and the material mentioned was actually furnished, and the same was so performed and furnished at our request.

Dated this.....day of, 18....

.....

.....

.....

Commissioners of Highways.

No. 11.**Complaint about Unsafe Toll-bridge.**

(Highway Law, § 13.)

COUNTY OF }
Town of..... } ss.:

....., being duly sworn, says that he believes the toll-bridge belonging to..... situated on the.....at..... has become and is unsafe for public use and travel; and that the reasons for his belief are founded on the following facts:

Subscribed and sworn to before me, }
this.....day of....., 18.. }

.....

Notary Public

No. 12.**Notice to Owners of Unsafe Toll-bridge.**

(Highway Law, § 13.)

To.....

You are hereby notified that the commissioners of highways of the town of....., in the county of....., have, on complaint

Forms

made, carefully and thoroughly examined the toll-bridge situated on the at and found it to be unsafe for public use and travel in the following particulars:

Dated this day of 18....

.....
.....
.....

Commissioners of Highways.

No. 13.

Application to Lay Water-pipes in Highway.

(Highway Law, § 14.)

To the Commissioners of Highways of the Town of

County of

The undersigned, an inhabitant of the said town of does hereby make application to you for permission to lay and maintain water-pipes and hydrants under ground, within the highways of said town, pursuant to section 14 of the highway law, as follows:

Dated this day of , 18....

.....

No. 14.

Permission to Lay Water-pipes in Highway.

(Highway Law, § 14.)

The undersigned, commissioners of highways of the town of, in the county of, on the written application of, do hereby grant permission to the said to lay and maintain water-pipes and hydrants under ground within the highways of said town, as follows: But such pipes are not to be laid under the traveled portion of the highway, except to cross the same for the purpose of supplying premises with water; and this permission is upon condition that such pipes shall be so laid as not to interrupt or

Forms.

interfere with public travel upon the highway, and that the applicant shall replace all earth removed, and leave the highway in all respects in as good condition as before the laying of such pipes.

Dated this day of, 18....

.....
.....
.....

Commissioners of Highways.

No. 15.**Claim for Damages Against Town.**

(Highway Law, § 16.)

To, Supervisor of the Town of, in the County of:

I claim a cause of action against the said town of, by reason of defects in the highway (or bridge) in said town, and the following is a statement of such cause of action:

Dated this day of 18....

.....

STATE OF NEW YORK, }
County of..... } ss.:

....., being duly sworn, deposes and says that he is the above named claimant; that he has read the foregoing statement and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Sworn to before me, this.... }
day of, 189.. }

.....
Notary Public.

Forms.

No. 16.**Report of Highway Commissioners.**

(Highway Law, § 19.)

AT FIRST MEETING OF TOWN BOARD.

The undersigned, commissioners of highways of the town of....., in the county of....., hereby render to the town board of said town, the following report:

1. The highway labor assessed in said town for the year ending on, 18..., was.... days; and the highway labor performed in said town during the said year was.... days, as appears by the accounts rendered us by the several overseers of the highways in said town.

2. The said commissioners have received during the said year the following sums of money for fines and commutations, and from other sources:

Date.	FROM WHOM RECEIVED.	On what account.	Amount.

3. They have paid out during the said year, for which they have receipts in full, the following sums:

Date.	TO WHOM PAID.	On what account.	Amount.

4. The improvements which have been made on the highways and bridges in said town during said year are as follows: And the highways and bridges in said town are as to condition as follows:

Dated this ... day of February, 18...

.....
.....
.....

Commissioners of highways.

AT SECOND MEETING OF TOWN BOARD.

The undersigned, commissioners of highways of the town of....., in the county of....., hereby render to the town board of said town the following report:

Forms.

1. The following improvements are necessary to be made on the highways and bridges in said town during the next fiscal year, viz.:

.....

2. The probable expense of making such improvements beyond what the labor to be assessed will accomplish, is by us estimated at \$.....

Dated this ... day of November, 18....

.....
.....
.....

Commissioners of Highways.

No. 17.**Notice to Remove Obstructions.**

(Highway Law, § 21.)

To... , Overseer of Highway District No...., of the Town of
in the County of.....:

We, the undersigned inhabitants of said town, liable to payment of highway tax, hereby give notice that the highway in said district is obstructed by.....at.....and request that you forthwith proceed to remove said obstruction.

Dated this....day of....., 18 ...

.....
.....

No. 18.**Lists of Inhabitants.**

(Highway Law, § 31.)

I,, overseer of highway district No...., of the town of.....
.....do hereby certify that the following is a true and correct list of all the inhabitants and corporations who are liable to work on the highways in said district.

NAMES.

NAMES.

Dated this....day of....., 18....

.....

Overseer of Highway District No....

Forms.

No. 19.**List of Non-Resident Lands.**

(Highway Law, § 32.)

The following is a list and statement of the contents of all lots, pieces or parcels of land within the town of....., in the county of....., owned by non-residents therein, made by the undersigned, commissioners of highways of said town:

NAME OF TRACT	Number lot.	Part.	Number section.	Township.	Number range	Number acres.	Valua- tion.

Dated this....day of....., 18....

.....

.....

.....

Commissioners of Highways.

No. 20.**Road Warrant.**

(Highway Law, § 33.)

To....., Overseer of Highways in District No....., of the Town of....., bounded as follows.....

.....

You will cause the several persons and corporations whose names are hereunto annexed, to labor on the highways in your district the number of days set opposite their names, or commute therefor at the rate of one dollar for each day; two-thirds to be performed by the first day of.....next, and the residue by the first day of.....next. You are also required to cause all noxious weeds on the highways in your district to be cut down between the fifteenth day of June and first day of July, and again between the fifteenth day of August and first day of September; and also to cause the loose stones

Forms.

lying on the beaten track of the road to be removed at least once in each month from the first day of April to the first day of December. Should any name in your district be omitted, or new inhabitants move in, you are to annex their names, and to assess them in proportion to their real and personal estate. And whenever the labor in your ward or district has been worked out, commuted for, or returned to the supervisor, and the highways are obstructed by snow, or otherwise, and written notice has been given to you by any two or more inhabitants of the town liable to the payment of highway tax, requesting the removal of such obstruction, you are required to immediately call upon all persons liable to highway tax in your district to assist in removing such obstructions, and such labor, so called for by you, shall be assessed upon those liable to perform the same, in proportion to their original assessments. Also, to deliver to the supervisor of said town, on or before the first day of October next, a list of all resident landholders residing in your district, who have not worked out their highway assessment or commuted for the same, and a list of all the lands of non-residents, and of persons unknown, which are taxed on your list, on which the labor assessed by the commissioners or added by you, according to law, has not been performed or commuted for, and the number of days unpaid for by each, charging for the same at the rate of one dollar and fifty cents per day, which list shall be accompanied by your affidavit, duly certified, that you have given the notice required by sections 60 and 61 of the highway law, and that the labor for which such residents and such land is returned has not been performed or commuted. *You are to make return to one of the commissioners of highways on the second Tuesday next preceding the annual town meeting in your town, within the year for which you are appointed, verified by your oath containing:* First. The names of all persons assessed to work on the highways in the district of which you are overseer. Second. The names of all those who have actually worked on the highways with the number of days they have so worked. Third. The names of all those who have been fined, and the sums in which they have been fined. Fourth. The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by you. Fifth. A list of all persons whose names you have returned to the supervisor as having neglected or refused to work out their highway assessments, with the number of days and

Forms.

amount of tax so returned for each person, and a list of all lands which you have returned to the supervisor for non-payment of taxes, and the amount of tax on each tract of land so returned—according to the statute in such case made and provided. And you are to pay over to said *commissioners* according to law, all moneys payed to you for commutation by all moneyed or stock corporations hereby assessed upon it or them for highway labor, and all moneys remaining in your hands, arising from fees and commutations. The law imposes a penalty of ten dollars on the overseers for neglect or refusal to make such return, or to pay over said moneys, which fine the *commissioners* are bound to enforce in every case of default.

Dated this ... day of....., 18 ..

.....

.....

....

Commissioners of Highways.

NAMES.	Days assessed.	Days worked.	Days commuted.	Amount of fines.

No. 21.

Appeal by Non-resident.

(Highway Law, § 36.)

COUNTY OF..... }
Town of } ss.:

....., a non-resident owner of lands in said town, considering (or..... agent of....., a non-resident owner of lands in said town, who considers) himself aggrieved in the assessment for highway labor by the commissioners of highways of said town, upon the following described lands, to wit: does hereby appeal from the assessment of said commissioners to the county judge of said county.

Dated this..... day of....., 18...

.....

Forms.

NOTICE TO COMMISSIONERS.

To.....,,, commissioners of highways of the town of, You are hereby notified, that considering myself aggrieved by your assessment for highway labor on the land owned by me in said town, I have this day appealed to the county judge of the county of, who will on the.....day of....., at....o'clock, in the.noon at....., in the village of.....hear and decide on said appeal.

Dated this.....day of....., 18....

.....

No. 22.**New Assessment by Overseers.**

(*Highway Law, § 42.*)

The amount of labor assessed on the inhabitants of highway district No., town of....., being deemed by me, the undersigned overseer of highways in said district, insufficient to keep the highways therein in repair, I do therefore, pursuant to section 42 of the highway law, make a further assessment as follows:

Names.	Days.	Names.	Days.

Dated this.....day of....., 18....

.....

Overseer of Highways, District No....

No. 23.**Order Authorizing Planting of Shade Trees, or Construction of Sidewalks.**

(*Highway Law, § 43.*)

COUNTY OF..... }
Town of..... } ss.:

We, the undersigned commissioners of highways of said town, do hereby authorize....., at his own expense, to locate and plant trees and locate

Forms.

and construct sidewalks along [the highway] adjoining his premises, in highway district No.....in said town, according to a map or diagram hereto attached and made a part of this order.

Dated this.....day of....., 18....

.....
.....
.....

Commissioners of Highways.

No. 24.

Application to Anticipate Sidewalk Tax.

(Highway Law, § 45.)

To the Commissioners of Highways of the Town of....., in the County of.....:

We, the undersigned, a majority of the inhabitants of highway district No....in said town of....., subject to assessment for highway labor therein, hereby make application to you for authority to anticipate and expend.....of the highway labor or commutation money of said district in the construction, improvement and repair of the sidewalks in said district for the term of.....years, pursuant to section 45 of the highway law.

Dated this....day of....., 18....

.....
.....
.....

ORDER OF COMMISSIONERS.

COUNTY OF..... }
Town of..... } ss.:

We, the undersigned commissioners of highways of said town, hereby authorize the overseer of highway district No...., in said town, to anticipate and expend.....of the highway labor or commutation money received therefor, in said district, for the term ofyears, in the construction, improvement and repair

Forms.

of the sidewalk within the limits of said district, pursuant to sections 45 and 46 of the highway law.

Dated this....day of....., 18....

.....
.....
.....

Commissioners of Highways.

No. 25.**Certificate of Anticipation.**

(*Highway Law, § 46.*)

COUNTY OF..... }
Town of..... } ss.:

I, the undersigned, overseer of highway district No....., in the said town of....., hereby certify that....has anticipated and worked (or commuted for).....days, constructing, improving and repairing the sidewalk within the limits of said district, pursuant to section 45 of the highway law.

Dated this....day of....., 18....

.....

Overseer of Highways, District No....

No. 26.**Transfer of Certificate.**

(*Highway Law, § 47.*)

For value received, I hereby assign and transfer all my right and interest in and to the within certificate of anticipation to...., grantee of the real property upon which such highway labor is assessable.

Dated this....day of....., 18....

..

Forms.

No. 27.**Request to Change System.**

(Highway Law, § 51.)

*To....., Town Clerk of the Town of....., in the County
of.....*

We, the undersigned, taxpayers of said town of....., hereby request that a vote by ballot be taken at the next annual town meeting in said town by the electors thereof entitled to vote thereon, on the question of changing the system of taxation for working the highways in said town, pursuant to sections 50, 51, 52 and 53 of the highway law.

Dated this.....day of.....18....

.....
.....
.....

No. 28.**Notice to Corporation.***

(Highway Law, § 60.)

To....., a Corporation (or..... Agent of.....):

Take notice that you (or) are assessed..... day's labor in highway district No..... in the town of....., county of, and that said labor is required to be performed on the highway atin said district on the.... day of..... next, and the days following, and you are required to furnish.....and to perform.....day's labor in a day, and will be allowed one day for every eight hours of work on said highway between 7 o'clock in the A. M. and 6 o'clock in the P. M.

Dated this.... day of....., 18....

.....
.....

Overseer of Highway District No....

Forms.

No. 29.**Notice to Non-Residents.**

(Highway Law, § 61.)

To..... Agent of....., a Non-resident Owner of Lands in the Town of in the County of.....

Take notice that....., a non-resident of the said town, is assessed..... days labor in highway district No., in said town, and that said labor is required to be performed on the highway at.....in said district on the.... day of..... next, and the days following.

Dated this ... day of....., 18....

.....
Overseer of Highway District No....

NOTICE FOR FILING.

Notice is hereby given that the highway labor assessed on the following described parcels of land in the town of....., county of....., owned by non-residents, is required to be performed from the day of to the....day of..... next, in highway district No...., in said town, on the highway at.....

OWNERS' NAMES.	Description of lands.	Days assessed.

Dated this....day of....., 18....

.....
Overseer of Highway District No....

No. 30.**List of Unperformed Labor.**

(Highway Law, § 66.)

To the Supervisor of the Town of.....in the County of.....:

The following is a list of all the resident landholders residing in highway district No...., in the said town of....., who have not worked out their highway assessments, or commuted for the same, with the number of days not worked or commuted for by each, at one dollar and fifty cents per day; and also a list of all the lands of non-residents and of persons

Forms.

unknown, which are assessed on my warrant by the commissioners of highways, or added by me according to law, on which the labor assessed has not been performed or commuted for, and the number of day's labor unpaid by each, charging for each at the rate of one dollar and fifty cents per day:

Owners' Name.	Description of land.	Assessed value.	Number of days	Amount.

LIST OF NON-RESIDENT LANDS.

Owners' Name.	Description of land.	Assessed value.	Number of days	Amount.

.....
Overseer of Highway District No....

COUNTY OF..... }
Town of..... } ss.:

....., being duly sworn, says he is the overseer of highway district No, in the town of....., in the county of....., and that he has given the notices to appear and work, required by sections 60 and 61 of the highway law, and that the labor for which such residents and such land is returned, has not been performed or commuted for.

.....
Overseer of Highway District No....

Subscribed and sworn to before }
me, this....day of....18.. }

.....
Notary Public.

No. 31.

Return of Overseer,
(*Highway Law, § 69.*)

To the Commissioners of Highways of the Town of....., in the County of.....:

The undersigned, overseer of highway district No....., in said town,

Forms.

hereby renders the following account pursuant to section 69 of the highway law:

1. The names of all persons assessed to work on the highways in said district are as follows:

NAMES.	Days assessed.

2. The names of all persons who have actually worked on the highways, with the number of days they have worked, are as follows:

NAMES.	Days worked.

3. The names of all those who have been fined, and the sums in which they have been fined, are as follows:

NAMES.	Amount.

4. The names of those who have commuted, and the amount of the commutation, are as follows:

NAMES.	Amount.

5. The moneys arising from penalties and commutations have been expended as follows:

6. Names returned to the supervisor of persons who have neglected or refused to work out their highway assessments, with the number of days and amount of tax so returned, are as follows:

NAMES.	Days assessed.	Amount of tax.

7. The following is a list of lands returned to the supervisor for non-payment of taxes:

NAMES OF OWNERS	Description.	Assessed value.	Number days.	Amount.
			

Overseers of Highway District No....

Forms.

COUNTY OF..... }
Town of..... } ss.;

....., being duly sworn, says he is overseer of highway district No., in the town of, and that the foregoing account subscribed by him, is true to the best of his knowledge and belief.

.....
Overseer of Highway District No....

Subscribed and sworn to before me, }
this....day of....., 18.... }

.....
Notary Public.

No. 32.**Notice to Remove Weeds.**

(Highway Law, § 71.)

To, Occupant of Abutting on the
Highway in Highway District No...., in the Town of.....,
County of....., N. Y.:

The undersigned, overseer of highways of said district, hereby notifies and requires you to cut all weeds, briars and brush growing upon the above described lands within the bounds of said highway within ten days after the receipt of this notice; and if you fail to do so, I shall cause the same to be cut and make a report thereof pursuant to section 71 of the highway law.

Dated this.....day of....., 18....

.....
Overseer of Highway District No....

No. 33.**Report of Overseers as to Weeds.**

(Highway Law, § 71.)

To the Commissioners of Highways of the Town of.....,
County of.....:

The undersigned, overseer of highway district No....., in said town,

Forms.

in accordance with section 71 of the highway law, hereby renders the following report:

The amount of money expended by me for cutting weeds, briars and brush within the bounds of the highway in said district, and the names of the owners and occupants of the several pieces or parcels of land against which said labor was performed, with a brief description of the same, are as follows:

NAME OF OWNER.	Name of occupant.	Description of premises.	Amount expended.

And in each case default was made by the occupant, after due notice had been given.

Dated this.....day of....., 18....

.....
Overseer of Highway District No....

COUNTY OF.....
Town of.....} ss.:

....., being duly sworn, says the foregoing report subscribed by him is true.

Subscribed and sworn to before me,
this.....day of....., 18..}

.....
Notary Public.

No. 34.

Certificate of Commissioners.

(Highway Law, § 71.)

To....., Supervisors of the Town of....., in the
County of.....:

The undersigned, commissioners of highways of said town, hereby certify that the annexed reports have been made by the overseers of highways whose names are thereto subscribed, pursuant to section 71 of

Forms.

the highway law; and that the several amounts therein expended were paid as follows:

Dated this.....day of....., 18....

.....
.....
.....

Commissioners of Highways.

No. 35.**Laying Out Highway upon Dedication.**

(Highway Law, § 80.)

APPLICATION.

To the Commissioners of Highways of the Town of.....,
County of.....:

The undersigned, liable to be assessed for highway labor in the town of....., hereby applies to you to lay out a highway in said town, commencing..... which proposed highway will pass through the lands of....., and....., who consent to the laying out of such highway.

Dated this.....day of....., 18....

.....

DEDICATION.

I,, of the town of....., county of....., N. Y., for value received, hereby dedicate to the town of....., aforesaid, a strip of land across my premises in said town, for the purpose of a highway, described as follows: And I also hereby release said town from all damages by reason of the laying out and opening of said highway.

In witness whereof, I have hereunto set my hand and seal, this..... day of....., 18....

.....

STATE OF NEW YORK, }
County of..... } ss.:

On this.....day of....., 18...., before me, the subscriber,

Forms.

personally appeared....., to me known to be the person described in, and who executed the foregoing agreement, and he duly acknowledged to me that he executed the same.

.....
Notary Public.

ORDER.

At a meeting of the commissioners of highways of the town of..... in the county of....., on the.....day....., 18...., for the purpose of deliberating on the propriety of laying out a highway in said town, hereinafter described, and on the application of....., a person liable to be assessed for highway labor in said town, and a release from the owners of the land through which the highway is proposed to be opened, having been given, it is ordered and determined that a highway shall be, and the same is hereby laid out in said town as follows: Beginning.....

Dated this.....day of, 18....

.....
.....
.....

Commissioners of Highways.

No. 36.**Laying Out Highway upon Release of Damages.**

(Highway Law, § 80.)

APPLICATION.

To the Commissioners of Highways of the Town of.....,
County of.....;

The undersigned, liable to be assessed for highway labor in the town of....., hereby applies to you to lay out (or alter) a highway in said town, commencing..... which proposed highway will pass through the lands of.....and....., who consent to the laying out (or altering) of such highway.

Dated this.....day of....., 18....

.....

Forms.

CONSENT OF TOWN BOARD.

The undersigned, the town board of the town of....., in the county of....., hereby consent that the commissioners of highways of said town make an order laying out (or altering) the proposed highway described in the application of....., pursuant to section 80 of the highway law.

Dated this.....day of....., 18....

.....
Supervisor.

.....
Town Clerk.

.....
.....
.....
.....
.....
Justices of the Peace.

RELEASE OF DAMAGES.

I,, of the town of....., county of....., N. Y., for and in consideration of the sum of....., hereby consent that a highway be laid out and opened (or altered) across my premises in the town of....., county of....., N. Y., pursuant to the application of....., dated the.....day of....., 18...., and release said town from all damages by reason of laying out and opening (or altering) such highway through my premises.

Dated this.....day of....., 18...

.....

ORDER.

At a meeting of the commissioners of highways of the town of..... in the county of....., on the.....day of....., 18..., for the purpose of deliberating on the propriety of laying out (or altering) a highway in said town hereinafter described, on the written application of, a person liable to be assessed for highway labor in said town, and the written consent of the town board of said town, and a release from the owners of the land through which the proposed highway is to be opened, the consideration of any one claimant not exceeding \$100, and to all the claimants not exceeding \$500, it is ordered and determined that a

Forms.

highway shall be, and the same is hereby laid out in said town as follows:
..... And the line of survey shall be the centre of
the highway, which shall be..... rods in width.

Dated this.....day of....., 18....

.....
.....
.....

Commissioners of Highways.

No. 37.**Application to Lay Out Highway.**

(Highway Law, § 82.)

To the Commissioners of Highways of the Town of.....

County of.....:

The undersigned, liable to be assessed for highway labor in your town,
hereby applies to you to lay out a highway in said town, as follows:
.....which proposed highway will pass through
the lands of..... and..... (who consent to the laying out of the high-
way, or as the case may be).

Dated this.....day of....., 18....

.....

No. 38.**Application to Alter Highway,**

(Highway Law, § 82.)

To the Commissioners of Highways of the Town of

County of.....:

The undersigned, liable to be assessed for highway labor in your town,
hereby applies to you to alter the highway leading from..... to
....., in said town as follows:.....

The proposed alteration passes through the lands of.....
and..... (who consent to the proposed alteration, or as the case may be).

Dated this ...day of, 18 ...

.....

Forms.

No. 39.**Application to Discontinue Highway.**

(Highway Law, § 82.)

To the Commissioners of Highways of the Town of.....
County of.....

The undersigned, liable to be assessed for highway labor in your town hereby applies to you to discontinue the old highway beginning on the ground that said highway has been abandoned.

Dated this....day of, 18....

.....

No. 40.**Application for Commissioners.**

(Highway Law, § 83.)

COUNTY COURT.—..... County.

IN THE MATTER OF THE APPLICATION OF.....TO LAY OUT (ALTER OR DISCONTINUE) A HIGHWAY IN THE TOWN OF AND THE ASSESSMENT OF DAMAGES THEREFOR.

To the County Court of..... County:

The petition of....., of the town of....., county of....., respectfully shows that your petitioner is a person liable to be assessed for highway labor in the town of....., county of; that on the....day of....., 18.., he presented the following application in writing to the commissioners of highways of said town That said application was in good faith made; that the commissioners of highways have not laid out (altered or discontinued) said highway pursuant to section 80 of the highway law.

Wherefore, your petitioner prays that three commissioners be appointed pursuant to section 84 of the highway law, to determine upon the necessity of the proposed highway (or altering or discontinuing the said highway), and to assess the damages by reason of laying out and opening (or altering or discontinuing) such highway.

Dated this....day of, 18 ...

.....

Forms.

STATE OF NEW YORK, }
County of..... } ss.:

....., being duly sworn, says he has read the foregoing petition by him subscribed, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me, }
this....day of..... 18.. }

.....
Notary Public.

No. 41.

Appointment of Commissioners.

(*Highway Law, § 84.*)

At a term of the County Court of the county of.....
held at..... in the..... in and for said county.

Present, Hon....., county judge.

**IN THE MATTER OF THE APPLICATION OF, TO LAY OUT (ALTER OR
DISCONTINUE) A HIGHWAY IN THE TOWN OF..... AND THE AS-
SESSMENT OF DAMAGES THEREFOR.**

On reading and filing the petition of....., of the town of....., in
said county, dated the day of, 18.., praying for the
appointment of three commissioners, pursuant to section 84 of the high-
way law, to certify as to the necessity of laying out and opening (altering
or discontinuing) a highway as follows:and to
assess the damages by reason of laying out (altering or discontinuing) such
highway, it is hereby ordered that ..., and of the town of
....., said county, be, and they are hereby appointed such commis-
sioners.

.....
County Judge.

Forms.

No. 42.**Subpoena and Oath.**

(Highway Law, § 84.)

SUBPOENA.

The People of the State of New York to and:

You and each of you are hereby commanded to be and appear before us, commissioners appointed by the county court of county, at the, in the town of on the day of, 18...., at o'clock in thenoon, to testify and give evidence in the matter of laying out (altering or discontinuing) a highway and assessing the damages therefor, in the town of, then and there to be heard and determined.

Dated this day of, 18....

.....
.....
.....

Commissioners.

OATH.

You do solemnly swear that the evidence you shall give touching the necessity of laying out (altering or discontinuing) the highway in question, and assessing the damages therefor (or as the case may be), shall be the truth, the whole truth and nothing but the truth, so help you God.

No. 43.**Notice of Meeting.**

(Highway Law, § 85.)

Notice is hereby given that the undersigned has made application to the commissioners of highways of the town of, in the county of, for the laying out (altering or discontinuing) of a highway in said town, as follows:which proposed highway (or alteration) will pass through the lands of..... and by an order of the county court dated the....day of.....18..,and.....were appointed commissioners to certify as to the necessity of said proposed highway (alteration or discontinuance), and to

Forms.

assess the damages by reason of the laying out and opening (alteration or discontinuance) of such highway ; and that said commissioners will all meet at.....in said town, on the....day of....., 18...., ato'clock in the.....noon, to examine the proposed highway (or the highway) and hear the commissioners of highways and all others interested therein, and to assess the damages if such highway be determined to be necessary (or is altered or discontinued).

Dated this....day of....., 18....

.....

AFFIDAVIT OF SERVICE.

STATE OF NEW YORK, }
County of..... } ss.:

...., being duly sworn, says that he caused notices in writing, of which the within is a copy, to be posted up at....., at.....and...., three public places in the town of....., said county, on the....day of....., 18...., and that he served a like notice onon the....day of....., 18...., by..... and that said notices were posted at the respective places, and served on the respective persons herein named, at least eight days before the time specified therein for the meeting of said commissioners.

Subscribed and sworn to before me, }
this....day of....., 18.. }

.....

Notary Public.

No. 44.**Decision Favoring Application.**
(Highway Law, § 86.)

The undersigned, by an order of the county court of.....county, dated the.....day of....., 18...., on the application of....., having been appointed commissioners to certify as to the necessity of laying out and opening (altering or discontinuing) a highway in the town of

Forms.

....., in said county, begining.....
 which proposed highway (or highway) crosses the lands of.....
and to assess the damages to be caused thereby; now, therefore, we, the said commissioners, having given due notice of the time and place at which we would meet, and all having met at.in said town on the.....day of....., 18...., pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service and posting of the notices by the applicant, pursuant to section 85 of the highway law, having viewed the proposed highway (or alteration or highway proposed to be discontinued) and the lands through which it is proposed to be laid out and opened (altered or discontinued) and having heard all the allegations of the commissioners of highways and the parties interested therein, and the evidence of all the witnesses produced, do thereupon certify, that in our opinion it is necessary and proper that the highway be laid out and opened (altered or discontinued) pursuant to the said application of....., dated the..... day of....., 18....; and we have assessed the damages required to be asseseed by reason of laying out and opening (altering or discontinuing) such highway as follows:

The damages of.....at \$.....; the damages of..... at \$.....

Dated this.....day of..., 18....

.....

 Commissioners.

No. 45.**Decision Denying Application.**

(*Highway Law, § 88.*)

The undersigned, by an order of the county court of.....county dated the....day of, 18...., on the application of....., having been appointed commissioners to certify as to the necessity of laying out and opening (altering or discontinuing) a highway in the town of.....in said county, as follows:
 which proposed highway (or highway) crosses the lands of
 and to assess the damages to be caused thereby; now, therefore, we, the said commissioners, having given due notice of the time and place

Forms.

at which we would meet, and all having met at..... in said town, on the....day of.....18.., pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service and posting of the notices by the applicant, pursuant to section 85 of the highway law, having viewed the proposed highway (or alteration or highway proposed to be discontinued) and the lands through which it is proposed to be laid out and opened (altered or discontinued) and having heard all the allegations of the commissioners of highways and the parties interested therein, and the evidence of all the witnesses produced, do thereupon certify, that in our opinion such highway, or alteration or discontinuance, is unnecessary and improper and should not be laid out (or should not be made, or such highway should not be discontinued).

Dated this....day of.....18....

.....
.....
.....

Commissioners.

No 46.**Notice of Motion to Confirm.**

(Highway Law, § 89.)

COUNTY COURT.—.....COUNTY.

IN THE MATTER OF THE APPLICATION OF.....TO LAY OUT (ALTER OR DISCONTINUE) A HIGHWAY IN THE TOWN OF....., AND THE ASSESSMENT OF DAMAGES THEREFOR.

To.....and.....:

Take notice that an application will be made to this court at a..... term thereof, to be held at the.....in the.....of....., on the.....day of....., 18...., for an order confirming the decision of the commissioners in the above entitled matter, which decision is dated the.....day of....., 18...., and for such other and further relief as to the court may seem proper; that said application will be made upon said decision and upon the affidavits and papers, with copies of which you are herewith served.

Dated this.....day of....., 18....

.....

Forms.

No. 47.**Order of Confirmation.**

(Highway Law, § 89.)

At a term of the.....County Court, held at the.....in the
.....of....., on the.....day of....., 18.....

Present—Hon., county judge.

COUNTY COURT—..... COUNTY.

IN THE MATTER OF THE APPLICATION OF.....TO LAY OUT (ALTER OR DIS-
CONTINUE) A HIGHWAY IN THE TOWN OF....., AND THE ASSESS-
MENT OF DAMAGES THEREFOR.

On reading and filing the decision of the commissioners,,and
...., in the above entitled matter, dated the....day of....., 18....,
by which it appears.....with proof of due service
upon.....and..... of notice of this application and.....
and on motion of....., counsel for....., after hearing....., counsel
for.....and....., opposed, and on readingit is hereby
ordered that the said decision be and the same is hereby confirmed.

.....
County Judge.

No. 48.**Order Laying Out after Confirmation.**

(Highway Law, § 89.)

WHEREAS,did present to us as commissioners of highways of the
town of....., in the county of....., a written application
dated the....day of....., 18...., to lay out a highway in said town :
and, whereas, commissioners were appointed by the county court of said
county, pursuant to section 84 of the highway law, and after having duly
met, certified that such proposed highway was necessary and proper and
should be laid out and opened, and assessed the damages therefor ; and the
said court having confirmed the decision of said commissioners (or no
motion having been made to the county court to confirm, vacate or modify
such decision) which said application, orders and certificate (or other

Forms.

papers) were duly filed in the office of the town clerk of said town, to which reference is here made.

Now, therefore, we, the undersigned commissioners of highways of said town, pursuant to section 89 of the highway law, do hereby lay out such highway as so applied for and ordered, whereof a survey has been made as follows: and the line of such survey shall be the center of the highway, which is to be..... rods in width.

Dated this.... day of....., 18....

.....

.....

.....

Commissioners of Highways.

No. 49.**Notice of Motion to Vacate or Modify.**

(Highway Law, § 89.)

County Court.— County.

IN THE MATTER OF THE APPLICATION OF.... TO LAY OUT (ALTER OR DISCONTINUE) A HIGHWAY IN THE TOWN OF....., AND THE ASSESSMENT OF DAMAGES THEREFOR.

To....and....:

Take notice that an application will be made to this court at a..... term thereof to be held at the.....in the.....of....., on the.....day of....., 18...., for an order vacating (modifying or correcting), in the following particulars.....the decision of the commissioners in the above entitled matter, which decision is dated the....day of....., 18...., with costs on this motion, and such further relief as the court may deem proper. That such application will be made upon said decision and the affidavits and papers, with copies of which you are herewith served.

Dated this.... day of....., 18....

.....

Forms.

No. 50.**Order Vacating or Modifying,**

(Highway Law, § 89.)

At a term of the County Court, held at the..... in the of....., on the..... day of....., 18....

Present—Hon., county judge.

IN THE MATTER OF THE APPLICATION OF....., TO LAY OUT (ALTER OR DISCONTINUE) A HIGHWAY IN THE TOWN OF....., AND THE ASSESSMENT OF DAMAGES THEREFOR.

On reading and filing the decision of the commissioners....., and , in the above entitled matter, dated the..... day of....., 18..., by which it appears with proof of due service upon....., and of notice of this application and..... and on motion of....., counsel for....., after hearing....., counsel for..... and..... opposed, and on reading....., it is hereby ordered that the said decision be and the same is hereby vacated (or modified or corrected as follows): (or that a new hearing be had before the same or other commissioners to be named herein), with \$..... costs of this motion to..... against.....

.....
County Judge.

No. 51.**Consent of Owner.**

(Highway Law, § 90.)

WHEREAS..... has made application in writing to the commissioners of highways of the town of....., in the county of....., dated the..... day of....., 18...., to lay out a highway in said town beginning at (insert description), and which said highway will pass through my orchard,

Now, therefore, I do hereby consent that such highway be so laid out, opened, worked and used through my said orchard; but this consent shall not be construed as a waiver or release of my claim for damages, by reason thereof.

Dated the..... day of....., 18....

.....

Forms.

No. 52.**Order Laying Out, after Consent.**

(Highway Law, § 90.)

WHEREAS,.....did, on the....day of....., 18...., present to us as commissioners of highways of the town of....., in the county ofa written application to lay out a highway in said town, passing through an orchard of...., of the growth of four years or more, and the said....having consented that such highway be so laid out ,

Now, therefore, we, the undersigned commissioners of highways, pursuant to section 90 of the highway law, do hereby lay out said highway, as so applied for, whereof a survey has been made as follows : and the line of survey is to be the center of the highway which is to berods in width.

Dated this....day of....., 18....

.....

.....

.....

Commissioners of Highways.

No. 53.**Certificate of Commissioners to County Court.**

(Highway Law, § 90.)

COUNTY COURT—.....COUNTY.

IN THE MATTER OF THE APPLICATION OF, TO LAY OUT A HIGHWAY
IN THE TOWN OF....., AND THE ASSESSMENT OF DAMAGES
THEREFOR.

To the County Court of.....County :

The undersigned, commissioners of highways of the town of....., in said county, hereby certify that on the....day of....., 18....,, who is liable to be assessed for highway labor in said town, made a written application to us as such commissioners to lay out a highway in said town, passing through an orchard of...., of the growth of four years or more, pursuant to section 90 of the highway law, as follows: And that the said.....does not consent thereto;

Forms.

that the following proceedings were had upon such application:
..... We further certify that the public interest will be greatly promoted by the laying out and opening of such highway through said orchard; and commissioners appointed by this court have certified that such highway is necessary and proper, and have assessed the damages of.....by reason thereof, at \$.....

Dated this.....day of....., 18....

.....
.....
.....

Commissioners of Highways.

No. 54.**Order of County Court.**

(*Highway Law*, § 90.)

At a term of the.....county court, held at....., in theof....., on the.....day of....., 18....

Present—Hon., county judge.

IN THE MATTER OF THE APPLICATION OF....., TO LAY OUT A HIGHWAY IN
THE TOWN OF....., AND THE ASSESSMENT OF DAMAGES
THEREFOR.

Upon reading and filing the certificate of.....,and....., commissioners of highways of the town of....., in the county of....., dated the.....day of....., 18...., stating.....
.....with proof of due service of notice of this motion, and upon reading theand after hearing....., of counsel for the applicant, andof counsel for....., opposed, it is hereby ordered that said highway be laid out and opened pursuant to section 90 of the highway law, with ten dollars costs of this motion.

.....
County Judge.

Forms.

No. 55.**Order of Appellate Division.***(Highway Law, § 90.)*

In the Appellate Division of the Supreme Court, for the.....department, held at the court-house in the city of.....on the.....day of....., 18....

Present—Hon., , Justices of the Supreme Court.

IN THE MATTER OF THE APPLICATION OF....., TO LAY OUT A HIGHWAY IN THE TOWN OF, AND THE ASSESSMENT OF DAMAGES THEREFOR.

....., , and , as commissioners of highways of the town of....., in the county of....., having presented to us the order of the county court of.....county, dated the.....day of....., 18...., that a highway be laid out in said town, passing through the orchard of....., of the growth of four years or more, pursuant to section 90 of the highway law, the said.....not consenting thereto, with the certificate and proofs upon which the said order was granted, duly certified by such court, with proof of due service of notice of this motion, on the said....., and after hearing....., of counsel for the applicant, on the motion, and....., of counsel for....., opposed, it hereby ordered that the said order of such county court be, and the same is hereby confirmed, with \$.....costs of this motion.

No. 56.**Order laying Out after Confirmation by Appellate Division.***(Highway Law, § 90.)*

WHEREAS,did, on the....day of....., 18...., present to us as commissioners of highways of the town of....., in the county of....., a written application to lay out a highway in said town, passing through an orchard of...., of the growth of four years or more, and such proceedings having been had thereon, pursuant to section 90 of the highway law, that the county court of said county has ordered said highway to be laid out and opened, which said order has been duly confirmed by a general term of the Supreme Court in the.....department,

Forms

which said application, certificates and orders and other papers in said proceedings are duly filed in the office of the town clerk of said town, to which reference is here made.

Now, therefore, we, the undersigned commissioners of highways, pursuant to section 90 of the highway law, do hereby lay out said highway as so applied for and ordered, whereof a survey has been made as follows: Beginning and the line of survey is to be the center of the highway, which is to be.... rods in width.

Dated this....day of....., 18....

.....
.....
.....

Commissioners of Highways.

No. 57.**Notice of Meeting.**

(Highway Law, § 94.)

To....and....:

Notice is hereby given that the undersigned, who are commissioners of highways for the town of....., will meet at.....in said town, on the....day of....., 18...., at....o'clock in the.....noon, for the purpose of determining upon the necessity of and arriving at a common understanding in relation to the laying out of a new highway (or the altering of a highway) extending from the town (or city or village) of.....to the town (or city or village) of....., and described as follows:.....

Dated this....day of....., 18....

No. 58.**Certificate of Disagreement.**

(Highway Law, § 94.)

COUNTY COURT—.....County.

IN THE MATTER OF THE APPLICATION OF....TO LAY OUT (OR ALTER) A HIGHWAY EXTENDING FROM THE TOWN (OR CITY OR VILLAGE) OF TO THE TOWN (OR CITY OR VILLAGE) OF.....

To the County Court of.....County:

The undersigned, commissioners of highways of the town of.....,

Forms.

in the county of....., hereby certify that on the ...day of....., 18....,, who is liable to be assessed for highway labor in the town of....., made a written application to us as such commissioners to lay out (or alter) a highway extending from the town (or village) of....., in the county of....., to the town (or city or village) of..... in the county of..... That the highway commissioners of the said towns (or the said town and the city or village authorities of the said city or village) cannot agree as to the necessity of such highway or the terms upon which the same shall be laid out.

.....
.....
.....

Commissioners.

No. 59.**Order Appointing Commissioners.**

(*Highway Law, § 94.*)

At a.....term of the county court of the county of....., held at.....in the.....in and for said county.

Present—Hon...., county judge.

IN THE MATTER OF THE APPLICATION OF....TO LAY OUT (OR ALTER) A HIGHWAY EXTENDING FROM THE TOWN (OR CITY OR VILLAGE)* OF, TO THE TOWN (OR CITY OR VILLAGE) OF... .

On reading and filing the certificate of....., and...., highway commissioners of the town of....., and...., and...., of the city or village of....., in the county of....., dated the....day of....., 18...., stating and upon reading the.....and after hearing...., of counsel for the applicant, and....., of counsel for....., opposed, it is hereby ordered that....,, and...., of the town of....., county of....., be, and they are hereby appointed commissioners to determine upon the necessity of laying out (or altering) such highway (or adjust the terms upon which such highway shall be laid out (or altered).

.....
County Judge.

Forms.

No. 60.**Decision of Commissioners.**

(Highway Law, § 94.)

The undersigned, by an order of the county court of.... county, dated the.....day of....., 18...., having been appointed commissioners to certify as to the necessity of laying out (or altering) a highway extending between the town (city or village) of.....and the town (city or village) of....., in the county of....., and described as follows.....; now, therefore, we, the said commissioners, having given due notice of the time and place at which we would meet, and all having met at....., in the town of....., on the.....day of..... 18...., pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service of the notice on the highway commissioners of the town of....., (or of the town of.....and city or village of.....) and having viewed the proposed highway (or proposed alteration of a highway) and the lands through which it is proposed to be laid out (or altered), and having heard all the allegations of the commissioners of highways and the parties interested therein, and the evidence of all the witnesses produced, do thereupon certify that in our opinion it is necessary and proper that the highway be laid out (or altered) and we have assessed the damages required to be assessed by reason of laying out (or altering) such highway as follows:

The damages of.at \$....., etc.

Dated this.....day of....., 18....

.....
.....
.....

Commissioners.

No. 61.**Applicaton to Lay Out Highway on Town Line.**

(Highway Law, § 97.)

To the Commissioners of each of the Towns of.....and.....in the County of.....:

We, the undersigned,, an inhabitant of the town of.....in

Forms.

said county, liable to be assessed for highway labor therein, and....., an inhabitant of the town of....., said county, and liable to be assessed for highway labor therein, hereby apply to you to lay out a highway on the line between said towns as follows....., and which said highway will pass through the lands of.....and.....

Dated this.....day of....., 18....

.....
.....

DIVISION INTO DISTRICTS.

It is hereby ordered that the said highway be divided into (two) districts as follows: That the part thereof from.....to.....shall be one of said highway districts, and shall be allotted to the town of...., and the residue of said highway shall be the other of said highway districts, and shall be allotted to the town of....

Dated this.....day of....., 18....

.....
.....
.....

Commissioners of Highways of the Town of.....

.....
.....
.....

Commissioners of Highways of the Town of.....

No. 62.**Description of Abandoned Highway.**

(*Highway Law, § 99.*)

We, the undersigned, commissioners of highways of the town of....., in the county of....., hereby certify that the following highway....., has been abandoned by the public, and is no longer used as a public highway; and pursuant to section 99 of the highway law, the same is discontinued.

Dated this....day of....., 18....

.....
.....
.....

Commissioners of Highways

Forms.

No. 63.**Notice of Fallen Tree.***(Highway Law, § 103.)**To.....*

Please take notice that a tree has fallen from your inclosed land into the highway at....., and you are hereby required to remove the same within two days after the service of this notice.

Dated this....day of....., 18....

.....

No. 64.**Notice of Encroachment.***(Highway Law, § 105.)**To.....*

You are hereby notified by the undersigned commissioners of highways of the town of....., in the county of....., that the highway in district No.. in said town adjoining the premises owned (or occupied by you at..... have been encroached upon (or obstructed) to the extent of..... by..... and you are hereby directed to remove the same within sixty days after the service of this notice.

Dated this....day of....., 18....

.....

.....

.....

Commissioners of Highways.

No. 65.**Application for Private Road.***(Highway Law, § 106.)*

To the Commissioners of Highways of the Town of.....County of.....

The undersigned, who is liable to be assessed for highway labor in your town, hereby makes application to you to lay out a private road for his

Forms.

use and benefit as follows:
and said proposed road will run through the land of....., occupied
by.....

Dated this....day of....., 18....

.....

No. 66.**Notice to Applicant.**

(Highway Law, § 108.)

To.....Owner, and.....Occupant:

....., of the town of....., in the county of.....
having made written application to us, the undersigned, as commissioners
of highways of said town, to lay out a private road for his use and benefit
in said town, a copy of which is hereto attached, you are hereby notified
that a jury will be selected at, in said town, on
the....day of....., 18...., ato'clock in the.....noon, for the
purpose of determining upon the necessity of such road, and assessing the
damages therefor.

Dated this....day of....., 18....

.....

.....

.....

Commissioners of Highways.

No. 67.**Affidavit of Service.**

(Highway Law, § 109.)

COUNTY OF..... }
Town of..... } ss.:

....., being duly sworn, says that he served the application and notice
hereto attached on.....and....., on the.....day of....., 18....
by delivering to and leaving with each of them true copies of the same.

.....

Subscribed and sworn to before me, }
this.....day of....., 18.... }

.....

Notary Public.

Forms.

No. 68.**Venire.**

(Highway Law, § 112.)

COUNTY OF..... }
 Town of..... } ss.:

To..... .:

You are hereby summoned and required to appear at the....., in said town of....., on the.....day of....., 18...., at..... o'clock in the.....noon, to form a jury of freeholders to determine as to the necessity of laying out a private road through the lands of....., on the application of....., and to assess the amount of damages sustained by reason of such opening, if it is determined to open the same.

Dated this.....day of....., 18...

.....
.....
.....

Commissioners of Highways.

No. 69.**Verdict of Jury.**

(Highway Law, § 114.)

COUNTY OF..... }
 Town of..... } ss.:

We, the undersigned, being six disinterested freeholders of the said town of.....having met on the.....day of....., 18...., at the house of....., in the said town, and having been duly sworn well and truly to determine as to the necessity of the private road described in the application of....., a copy of which is hereto attached, and having viewed the premises through which it is proposed to be laid out, and having heard the parties and evidence produced, do hereby certify that in our opinion it is necessary and proper to lay out a

Forms.

private road for the use and benefit of....., pursuant to his said application, and we assess the damages of.....at \$.....

Dated this.....day of....., 18....

.....
.....
.....
.....
.....
.....

No. 70.**Certificate of Commissioners.**

(*Highway Law, § 116.*)

WHEREAS,did present to us as commissioners of highways of the town of....., in the county of....., a written application to lay out a private road in said town for his use and benefit, hereinafter described ; and six disinterested freeholders having convened, after due notice to the owners and occupants of the lands through which said road is proposed to be laid, and after viewing said lands and hearing the parties and witnesses produced, certified that said road is necessary and proper, and assessed the damages to be caused thereby, which certificate was dated the....day of....., 18...., and duly filed with said application, in the office of the town clerk of said town ; and no motion has been made to the county court to confirm, vacate or modify (or as the case may be).

Now, therefore, we, the undersigned, commissioners of highways of said town, pursuant to section 116 of the highway law, do hereby lay out said private road as so applied for and certified to, whereof a survey has been made as follows :and the line of survey is to be the center of the road, which is to be....rods in width.

Dated this ...day of, 18....

.....
.....
.....

Commissioners of Highways.

Forms.

No. 71.**Notice by Highway Commissioners to those of Another Town.**

(Highway Law, § 135.)

To the commissioners of highways of the town of....., in the county of....., take notice that in pursuance of the proceedings of the board of supervisors of the county of....., as follows:....., you are required to join with the commissioners of highways of the town of....., in constructing (or repairing) such bridge, at the joint expense of said towns, and to serve upon us your written consent thereto, within twenty days after service of this notice upon you, and that in case of your failure so to do the undersigned commissioners of highways of the town of....., will proceed to construct (or repair) such bridge pursuant to law.

Dated this....day of....., 18....

.....
.....
.....

Commissioners of Highways of the Town of.....

No. 72.**Laying Out County Highways.**

(County Law, § 61.)

APPLICATION.

To the Board of Supervisors of the County of.....:

We, the undersigned, being twenty-five resident taxpayers of the county of....., hereby make application, in pursuance of section 61 of the county law, for the laying out of a county highway of the width of....., described as follows:

Dated this....day of....., 18....

.....
.....

NOTICE.

To the Highway Commissioners of the Several Towns in the County of.....:

Notice is hereby given that on the....day of...., 18....the fore-

Forms.

going application will be presented to the board of supervisors of the county of..... .

Dated this....day of....., 18....

.....
.....

STATE OF NEW YORK }
County of..... } ss.:

....., being duly sworn, says that he is a resident of....., N.Y., and that he served copies of the petition and notice annexed hereto, personally, on each of the following commissioners of highways at the times and places opposite their names, respectively:

..... at....., N. Y.,, at....o'clock in the.....noon.
..... at....., N. Y.,, at....o'clock in the.....noon.

.....

Subscribed and sworn to before me,
this....day of....., 18....

.....
Notary Public.

RESOLUTION BY SUPERVISORS.

At a meeting of the board of supervisors of the county of....., held at.....on the....day of....., 18....

WHEREAS. application has been made for the laying out (altering or discontinuing) of a highway in said county, and whereas satisfactory proof has been made to us of the service of a copy of such application, together with a notice of intention to make the same, upon a commissioner of highways of each town in said county.

Resolved, That a highway of the width of.....be laid out in accordance with such application, as follows:

....., *Chairman.*

....., *Clerk.*

Adopted.

Ayes....

Noes....

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